

NOT VOTING—6

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|-------|---------|----------|
| Akaka | Coleman | Kennedy |
| Bayh | Harkin | Menendez |

The bill (H.R. 5684) was passed.

CHANGE OF VOTE

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, on rollcall No. 250, I voted "yea"; it was my intention to vote "nay". I ask unanimous consent I be permitted to change my vote since it will not change the outcome.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The foregoing tally has been changed to reflect the above order.)

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:33 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

EXECUTIVE SESSION

NOMINATION OF ALICE S. FISHER TO BE AN ASSISTANT ATTORNEY GENERAL

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The assistant legislative clerk read the nomination of Alice S. Fisher, of Virginia, to be an Assistant Attorney General.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I rise today in strong support of a person from my hometown of Louisville, KY, Alice S. Fisher, who has been nominated to be Assistant Attorney General for the Criminal Division at the Department of Justice.

As I remarked at her confirmation hearing last year, Ms. Fisher is a battle-tested veteran of the war on terror. For the last year, she has again been on the front lines of that struggle.

She has, really, an outstanding and impressive record. She first joined the Justice Department in July of 2001 as a Deputy Assistant Attorney General in the Criminal Division. She was placed in charge of its counterterrorism efforts. Just 2 months later came September 11.

After that horrific day, our Government responded forcefully and quickly. Ms. Fisher's role was absolutely vital to that fight. She was responsible for coordinating all matters related to September 11 investigations and prosecutions. In addition, she headed up the implementation of the USA PATRIOT Act.

As a Deputy Assistant Attorney General, Ms. Fisher also headed up the De-

partment's efforts to combat corporate fraud just when the collapse of Enron and other corporate scandals were front-page news. She also helped draft the Sarbanes-Oxley Act and worked closely with the Securities and Exchange Commission.

In July of 2003, Ms. Fisher left the Department to become a partner at Latham and Watkins, where she concentrated on litigation and white-collar crime.

Last spring, Alice Fisher again answered the call to join her country by rejoining the front lines on the war against terror when the President nominated her to head the Criminal Division.

As I mentioned earlier, the Criminal Division has many important responsibilities, among them national security prosecutions, both counterterrorism and counterintelligence, combating gang violence and organized crime, prosecuting corporate fraud and identity theft, going after public corruption and protecting kids from child pornography.

For the last year Ms. Fisher has impressively led the Department in all facets of its operations while serving as a recess appointment. In this capacity, she has further demonstrated her expertise, determination and integrity. Alice Fisher is a proven leader.

Under her tenure, the counterterrorism section has convicted numerous terrorists, including Zacarias Moussaoui, the 20th September 11 hijacker. She created a new gang squad of experienced prosecutors to combat national and international gangs such as MS-13. She supervised the Enron task force resulting in the convictions of top executives Ken Lay and Jeffrey Skilling. She heads the Katrina Fraud Task Force which combats all fraud and corruption resulting from this national disaster. As of the end of July, the task force has charged 371 defendants. Under her leadership the Public Integrity Section has prosecuted major public corruption cases.

In addition, since the beginning of her tenure, the Department has aggressively prosecuted crimes against children. It is now coordinating 18 national child pornography operations.

Ms. Fisher was born and raised in my hometown of Louisville, KY, and is part of a close-knit family. Her father ran a chemical plant. Her mother worked the night shift as a nurse. She still has a lot of family back home in Louisville.

She earned her B.A. degree from Vanderbilt University and her law degree from Catholic University. Her husband, Clint, also serves our Nation as the Director of Aviation Policy for TSA. Last, but certainly not least, she is the mother of two boys, Matthew, age nine, and Luke, age five.

In a relatively short time, Alice Fisher has accomplished a great deal. She served her country after the September 11 attacks. She rose to become a partner in one of America's most pres-

tigious law firms, and she then chose to forego a more lucrative career in private practice to come back in and serve her country again.

Alice Fisher knows that every day she works on behalf of her country she is working to build a stronger and safer America for her two children and for all of ours. Thanks to her, America is a safer place than it was on September 11, 2001.

A man who held the job for which Ms. Fisher has been nominated is her old boss, Michael Chertoff, a pretty good lawyer in his own right. Alice earned praise when he called her "one of the best lawyers I've seen in my entire career."

America needs Alice Fisher to be confirmed as the next Assistant Attorney General of the Criminal Division. I look forward to her confirmation. She is a wonderful person, an accomplished lawyer, and a Kentuckian of whom all America can be proud.

She has support from a number of groups I will make reference to, including the support of the Fraternal Order of Police, the Federal Law Enforcement Officers Association and the National District Attorneys Association. I ask unanimous consent those letters of endorsement be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL DISTRICT
ATTORNEYS ASSOCIATION,
Alexandria, VA, August 17, 2006.

Hon. ARLEN SPECTER,
Chairman Committee on the Judiciary,
Washington, DC.

Hon. PATRICK J. LEAHY,
Ranking Member, Committee on the Judiciary,
Washington, DC.

DEAR CHAIRMAN SPECTER AND SENATOR LEAHY: I want to most strongly support the nomination of Alice Fisher as the Assistant Deputy Attorney General of the United States in charge of the Criminal Division and urge her speedy confirmation.

Ms. Fisher served her country well as the Deputy Assistant General in the Criminal Division during a unique and tragic time in this nation's history. During the period following September 11, 2001, Ms. Fisher was responsible for managing the Counter-Terrorism Section and worked on the development of policy issues on criminal law enforcement and national security.

Since her appointment as Assistant Attorney General in the Criminal Division she has been responsible for the Department of Justice's response to Hurricane Katrina and the aftermath of widespread fraud; the development of a strategic plan to address the burgeoning identity theft problem that confronts this nation; child sexual exploitation issues; corporate fraud; and public corruption issues.

Prior to Ms. Fisher's career in the Department of Justice she also served Congress in her capacity as Deputy Special Counsel to the United States Senate Special Committee to investigate the Whitewater Development and Related Matters.

Given Ms. Fisher's experience in both the legislative and executive branches of government and her exhibited level of commitment to the Department of Justice I can think of no one who would bring more ability to this position than she would.

If you have any questions or concerns in regard to my support of Ms. Fisher please do not hesitate to contact me.

Sincerely,

THOMAS J. CHARRON,
Executive Director.

GRAND LODGE, FRATERNAL
ORDER OF POLICE,
Washington, DC, August 1, 2006.

Hon. ARLEN SPECTER,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Hon. PATRICK J. LEAHY,
Ranking Member, Committee to the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN AND SENATOR LEAHY: I am writing on behalf of the membership of the Fraternal Order of Police to advise you of our support for Alice S. Fisher to be continued as the next Assistant Attorney General for the Criminal Division at the U.S. Department of Justice.

For more than one year, Ms. Fisher has served as Assistant Attorney General for the Criminal Division as a recess appointment. She has diligently served in this role and has coordinated with law enforcement on a variety of issues, including antiterrorism prosecutions, public corruption cases, and child sex exploitation cases. Prior to this, Ms. Fisher served as Deputy Assistant Attorney General of the Criminal Division at the U.S. Department of Justice and was responsible for managing both the Counterterrorism and Fraud Sections at the Department. During her tenure, she was responsible for coordinating the Department's national counterterrorism activities, including all matters relating to September 11th investigations and prosecutions, terrorist financing investigations, and the implementation of the USA PATRIOT Act.

Her management of the Fraud Section included supervising many investigations into corporate fraud, particularly in the areas of securities, accounting, and health care. She worked on a variety of policy matters relating to identity theft and testified before the Senate Special Committee on Aging about the impact of these crimes on our nation's senior citizens.

Currently Ms. Fisher's management of the Innocence Lost Initiative, a cooperative effort to prevent and prosecute child prostitution between the FBI, the Criminal Division's Child Exploitation and Obscenity Section and the National Center for Missing and Exploited Children, has led to 188 open investigations, 547 arrests, 79 complaints, 105 indictments, and 80 convictions in both the Federal and State systems.

Ms. Fisher's experience as a litigator and policy-maker, as well as her strong, positive relationship with the law enforcement community, makes her an excellent choice to lead the Criminal Division. The F.O.P. has no doubt that she will continue to be an outstanding Assistant Attorney General, and we urge the Judiciary Committee to expeditiously approve her nomination. If I can provide any further recommendations for Ms. Fisher, please do not hesitate to contact me or Executive Director Jim Pasco in my Washington office.

Sincerely,

CHUCK CANTERBURY,
National President.

FEDERAL LAW ENFORCEMENT
OFFICERS ASSOCIATION,
Lewisberry, PA, August 31, 2006.

Hon. HARRY REID,
U.S. Senate, Washington, DC.

DEAR SENATOR REID: On behalf of the 25,000 members of the Federal Law Enforcement Officers Association (FLEOA), I am writing

to you in support of the nomination of Alice S. Fisher for the position of Assistant Attorney General of the Criminal Division of the Department of Justice. Since her nomination easily cleared the Senate Judiciary Committee in May, we are now appealing to you in your leadership role as the Senate Minority Leader to intervene and help bring this important matter to the floor of the Senate for a full vote.

It our understanding that this process has stalled due to the unfortunate invocation of partisan politics. As the largest non partisan professional federal law enforcement association, FLEOA would like to see Ms. Fisher's nomination evaluated based on its merit. To that end, the membership of FLEOA is convinced that Ms. Fisher's impressive credentials would result in her being confirmed should the matter reach the floor of the Senate.

Why is this matter important to the membership of FLEOA? Several of our members have had the distinct pleasure of working with Ms. Fisher, or have served on one of the many task forces she oversees. Two notable examples are the Katrina Fraud Task Force and the President's Identity Theft Task Force. When you ask one our members about their experience working with Ms. Fisher, the typical response is an enthusiastic thumbs-up. Ms. Fisher has earned the reputation as a tireless proponent of federal law enforcement, and she commands the respect of our membership.

In her capacity as the Deputy Attorney General, Ms. Fisher did an outstanding job leading the Enron Task Force. Again, several FLEOA members who were involved in the Enron investigation have nothing but the highest praise for Ms. Fisher. A logical person that objectively reviews Ms. Fisher's long resume of distinguished accomplishments can only reach one conclusion: her confirmation as the Assistant Attorney General for the Criminal Division will significantly strengthen the law enforcement component of our nation.

While the threat of domestic terrorist attacks continues to escalate, time does not take pause to accommodate indecision. If we sit back and allow Ms. Fisher's recess appointment to expire, then we become complicit in weakening the Department of Justice. This is unacceptable to the membership of FLEOA.

We have reached a pivotal point in our government's history where it has become increasingly difficult to recruit and retain the best and the brightest minds to assume leadership positions. If we don't make every effort to confirm the nomination of Ms. Fisher, then who do we expect to get to fill these important positions? More importantly, who will the Attorney General have to turn to for assistance in initiating and overseeing numerous federal law enforcement task forces?

Senator Reid, the membership of FLEOA hopes that you will consider the nomination of Ms. Fisher a priority matter. We are prepared to provide you with additional recommendations and anecdotal support if necessary. Please don't hesitate to contact me or Executive Vice President Jon Adler if we can be of further assistance. On behalf of the FLEOA membership, I thank you for your leadership and your service to our great country.

Sincerely,

ART GORDON,
National President.

Mr. MCCONNELL. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, what is the pending question?

The PRESIDING OFFICER. The pending question is the nomination of Alice Fisher. The Senator from Vermont has 30 minutes.

Mr. LEAHY. Mr. President, I will use part of that time.

Today we are considering the nomination of Alice Fisher for the position of Assistant Attorney General of the Criminal Division of the U.S. Department of Justice. We have less than 2 weeks left in the legislative session before we recess for the elections. The Republican leadership has once again delayed doing the work of the American people so they can consider a nominee about whom many questions remain.

We are being required to consider this nomination despite unanswered questions regarding her role in the administration's controversial, questionable detainee treatment policies. Of course, on these questions, as on so many other matters involving torture and detainees at Guantanamo, the administration has refused to provide Congress with the information it has sought.

As I said 2 weeks ago when the President re-nominated five extremely controversial choices for lifetime positions on the Nation's highest courts, I continue to be disappointed in the misguided priorities of the Bush-Cheney administration and, in fact, the rubberstamp Senate Republican leadership. I really think all Americans—Republicans and Democrats—would be better served if we used the few remaining weeks of this legislative session to address vital, unfinished business, such as the war in Iraq. That might be something the American people would really like to see us debate, the war in Iraq. We haven't had a real debate on it since we saw that huge sign a few years ago behind the President that said: "Mission Accomplished." He was dressed up like Tom Cruise in "Top Gun" and put up the sign that said: "Mission Accomplished." I guess they decided it was all over; why debate it?

It would be nice if we enacted a Federal budget. The law says—the law says, and I say this to my law-and-order friends who control the agenda, my Republican friends who control the agenda—the law says we have to have a budget passed by April. We didn't do it in April or May or June or July or August, now September. We are all law and order around here, but apparently we think we don't have to follow the law.

Of course, we are supposed to pass the 11 remaining required appropriations bills by the end of this month. It doesn't look like that is going to happen.

We talked about enacting lobbying reform and ethics legislation. I remember the Republican leadership having a wonderful press conference, just absolutely wonderful—just touched by it—especially knowing they would never bring up the legislation.

It would be nice to address the skyrocketing cost of fuel. I don't think any one of us goes home where we don't hear about the cost of gas, but we don't do anything about that.

People talk to me about health care. We don't do anything about that, either.

How about a bipartisan, comprehensive immigration reform bill? I stood outside the White House and praised President Bush for his support of a comprehensive immigration reform bill. He told several of us in a long meeting—and I think he was passionate about it—that we needed to have one. When a 30-vehicle caravan of Vice President CHENEY's with sirens wailing came up to the Hill today, I don't think they were saying: Let's pass a comprehensive immigration reform bill.

But what we can do is controversial nominations—not the items the law requires us to do but the things the fundraising letters require.

In this case, we have an interesting nominee to be the head of the Criminal Division for the Justice Department. She has never prosecuted a case. She has minimal trial experience. But she is going to be the head of the Criminal Division of the Justice Department. Her career has been spent almost entirely in private practice.

She is a longtime protégée of Homeland Security Secretary Michael Chertoff, who was in overall charge of cleaning up after Katrina, which I know will happen some day. So after being his protégée, she is rewarded with the post of heading the Criminal Division of the Justice Department.

I did not block her from coming out of the Judiciary Committee. We had a voice vote on June 16 of last year. But then concerns arose about her role, while Mr. Chertoff's deputy, in meetings in which controversial interrogation techniques used on detainees at the Naval Facility in Guantanamo Bay, Cuba, were discussed and decided upon with the Department of Defense. There remain questions about whether Ms. Fisher attended those meetings and her role in determining how these detainees would be questioned and treated. What did she know? When did she know it? What did she do about it? They are simple questions: What did she know? When did she know it? And what did she do about it? None of that has been answered.

This administration has yet to come clean to the Congress or to the American people in connection with the secret legal justifications it has generated and practices it employs. They can't dismiss these outrageous practices at Guantanamo as the actions of a few "bad apples". With the Senate

adoption of the antitorture amendment last year, the recent adoption of the Army Field Manual, and 5 years of the Bush-Cheney administration's resistance to the rule of law and resistance to the U.S. military abiding by its Geneva obligations, that may be finally coming to a close. Of course, we can't even be sure of that, given that despite the great fanfare surrounding the law against torture, we had a Presidential Signing Statement that undermined enactment of the antitorture law and basically said the President and those he designates can work outside the law.

Now, I remain troubled by the nominee's lack of prosecutorial trial experience. There have been people who have held this position—Mr. Chertoff, James Robinson, William Weld—who were seasoned Federal prosecutors. In her case, she would be supervising people who have to prosecute and make judgment calls on very complex cases. They would have to decide whether to go forward. She will be the one to finally sign off on that, but she has never prosecuted a case. It is sort of like saying you are going to be the head brain surgeon; however, you have never really been in an operating room, you have never seen a brain, but there you go.

Even more troubling, perhaps, is the fact that there are so few senior officials at the Justice Department who do have experience in criminal prosecution. I agree with the chairman of the Judiciary Committee, Senator SPECTER, who has noted: The lack of criminal experience at the top of the Department "does concern me." He said that while there were lots of "first-class professionals" throughout the ranks of prosecutors, "there are tough judgment calls that have to be made at the top, and it's good to have some experience on what criminal intent means when you have to make those decisions."

Both Senator SPECTER and I are former prosecutors. We understand that.

I also share the concern of the distinguished senior Senator from Michigan, Senator LEVIN, with the uncertainty about Ms. Fisher's role as Mr. Chertoff's deputy in the development and use of controversial detainee interrogation techniques. Despite repeated requests from Senator LEVIN, who is, after all, the ranking member and a past chairman of the Senate Armed Services Committee, joined by others, the Justice Department refused to satisfy Senators on these points. As a result, concerns remain whether Ms. Fisher had knowledge of the abuse of detainees at Guantanamo and what, if any, action she took. The rubberstamp Republican leadership of this Congress has gone along with the administration and said: You can't have the information.

Sometimes holding this stuff back creates far more of a problem than just telling the truth out front. If FBI Director Mueller had been more forth-

coming with me at, or after, the May 2004 hearing in which I asked him what the FBI had observed at Guantanamo, we could have gotten to a detention and interrogation policy befitting the United States years sooner than we have. But rather than answer a simple, clear question, it is easier to stonewall.

If the administration had been forthcoming with Congress in October of 2001 when it decided secretly to flout the FISA law and conduct warrantless wiretaps of Americans, we could have avoided 5 years of lawbreaking, and we could have had a more effective surveillance program targeted at terrorists, not Americans.

In other words, every time they cover up, things get worse. Just tell the truth, be open, and things get better. If the administration had answered me when I asked over and over about the Convention Against Torture and about rendition, we could have come to grips with those matters before they degenerated, as they have, into what has become an international embarrassment for the United States. Former Secretary of State Colin Powell, a former Chairman of the Joint Chiefs of Staff, now acknowledges it threatens our moral authority on the war on terrorism. Again, if the administration had honestly answered years ago, we could have cleared it up, and we wouldn't be in a case where the rest of the world looks at us now and asks us what we are doing.

Just today, a Canadian commission, having studied it, reports that a Canadian citizen, Maher Arar, who was returning from vacation—a Canadian citizen, a Canadian citizen—was arrested by American authorities at JFK Airport in New York. He was held for 12 days, not allowed to speak to a lawyer or a Canadian consular official, and he was then turned over not to Canada, which was 200 miles away, but to Syria where he was tortured, thousands of miles away.

So here is what the United States is faced with. We seized a person from another country in New York, we don't allow him to speak to a lawyer, and we don't allow him to speak with his consular official from his own embassy. We don't send him back to his country, where if he is wanted for something they could arrest him—it is, after all, about a 5-hour drive to the Canadian border—instead we ship him thousands of miles away to be tortured in a Syrian prison, incidentally done without the knowledge of the Canadians.

Now, I know how Senator LEVIN must feel because all of my efforts to get to the bottom of this case have also been brushed aside by the Bush-Cheney administration. Over the years, I have yet to get a satisfactory explanation. The Canadian commission, though, found he had no ties to terrorists. He was arrested on bad intelligence, and his forced confessions in Syria reflected torture, not the truth. We know if you torture somebody long enough, they will say anything you want.

The United States should acknowledge what it did, but instead, it uses legal maneuvers to thwart every effort to get to the facts and be accountable for its mistakes. No matter how egregious the mistake, no matter how many international laws are broken, nobody ever admits a mistake around here.

Now, I certainly understand, if somebody votes against this nomination, it may be a vote not so much against Ms. Fisher, but a vote against this administration's stonewalling and going it alone to the detriment of the interest of the United States and the safety, security, and rights of all Americans.

Last month, our Nation commemorated the one-year anniversary of Hurricane Katrina and the devastation it wrought. We haven't done much to clean it up at Homeland Security, but it is the one-year anniversary. Last week, our Nation commemorated the fifth anniversary of the deadliest terrorist attack on American soil in our Nation's history. These twin tragedies—one caused by nature, one caused by terrorists—serve as somber, but ever present, reminders that our Nation is still not secure. One year after this administration's appalling foot-dragging, incompetent, and wasteful response to Hurricane Katrina, our Nation still has citizens on the Gulf Coast who do not have homes to return to or jobs waiting when they get there. Five years after 9/11, our country still lacks an effective international strategy to protect the American people from terrorism. We need to refocus our efforts and our resources where they belong: on providing real security for the American people. America can do better. The full agenda before us as we enter the final weeks of this legislative session reflects how, even though one party controls the White House, the House of Representatives, and the Senate—even though we have a one-party Government—these Republicans have failed, at our Nation's most pressing hour, to provide this country with leadership.

Mr. President, I see the distinguished Senator from Texas on the Senate floor. I reserve the remainder of my time, and I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I come to the floor to speak in favor of the confirmation of Alice Fisher, the President's nominee to be Assistant Attorney General in charge of the Criminal Division at the U.S. Department of Justice. I am glad to say that Ms. Fisher's confirmation will finally overcome the unnecessary obstruction that she faces in this Congress which has forced the President to reassess her appointment.

Ms. Fisher is an outstanding nominee for this position. In addition to her credentials, she has substantial previous public service experience, particularly in the Criminal Division during a difficult time following the terrorist at-

tacks of September 11. That experience will serve her well as Assistant Attorney General for the Criminal Division.

The Criminal Division is one of the most important jobs of the Department of Justice. It handles a variety of issues, including counterterrorism, violent crime, corporate fraud, and crimes against children. The Criminal Division's importance to the success of America's fight in the war against terror makes it all the more important that the Senate end this obstruction and make Ms. Fisher's appointment permanent.

Beginning with her service as Deputy Special Counsel to the U.S. Senate's Special Committee to Investigate Whitewater, Ms. Fisher has exemplified the attributes needed to lead an organization with a mission vital and important, obviously, to the Department of Justice's Criminal Division. Prior to her latest Government service, she was a litigation partner for 5 years at the DC office of Latham & Watkins, one of the premier law firms in the country. She takes from that experience a respect and deep knowledge of the law.

Since her recess appointment in November of 2005, necessitated because of holds on her nomination, Ms. Fisher has served as Assistant Attorney General with distinction, honor, and success. She immediately refocused the division's mission in a way that reflects the priorities of the administration. For example, under Ms. Fisher, the Criminal Division has made impressive headway in supporting the Nation's national security mission, in combating violent crime, including gang violence, and protecting our children from exploitation on the Internet and elsewhere.

What is troubling about the debate today on this nomination is that we are having a debate about a nominee who so clearly deserves confirmation. What is troubling about today's debate is that it is reflective of the continued obstruction of nominees by Democrats in the U.S. Senate. This obstruction has not only affected judicial nominations, which is perhaps better known, but also the confirmation of important executive branch nominees with significant national security responsibilities. Ms. Fisher oversees vital counterterrorism and counterespionage divisions. But because her nomination has been blocked, these critical components have operated without a Senate-confirmed supervisor for more than a year.

Consider the constant refrain from our colleagues on the other side of the aisle that this Republican-led Congress is not doing everything it can to protect America's national security. Beyond Ms. Fisher's nomination, this message stands in stark contrast with the democrats' record of obstruction on other key national security posts.

Perhaps the most inexcusable obstruction pertains to the nomination of Kenneth Wainstein, who would head the newly created National Security

Division. Mr. Wainstein's confirmation would fulfill one of the key recommendations of the WMD Commission, the Weapons of Mass Destruction Commission. It was the WMD Commission that recommended the reorganization of intelligence-gathering components within the Department of Justice. Mr. Wainstein has broad-based, bipartisan support, yet he inexplicably still faces a Democrat filibuster-by-hold.

We cannot wait any longer for Democrats to release their hold on Mr. Wainstein. In the 5 years since the attacks of September 11, the Federal Government has taken a number of steps to reorganize and improve its resources to better fight terrorism. Our terrorist enemies are always changing and adapting, and so must we—if we are to keep the upper hand in the war on terror.

Some 15 months ago, the WMD Commission recognized that improvements should be made to the Department of Justice's national security apparatus. They recommended a reorganization of the Department and the creation of a new National Security Division—which would bring together under one umbrella all the national security components of the DOJ.

The National Security Division that Mr. Wainstein would oversee is critically important to the Department—and to America's national security. It will integrate the key national security components—the Counterterrorism and Counterespionage Sections of the Criminal Division and the Office of Intelligence Policy and Review, which has the lead role in implementing the Foreign Intelligence Surveillance Act, FISA—under the leadership of a single Assistant Attorney General. Bringing together these mission-critical entities will enhance our ability to fulfill our top priority of preventing, disrupting and defeating terrorist acts before they occur.

The President approved the WMD Commission's recommendation more than a year ago. And Congress embraced the concept and fully authorized the National Security Division as part of the USA PATRIOT Act reauthorization. Congress has also approved a reprogramming request submitted by the DOJ and office space has been dedicated and renovated—but unfortunately, it remains vacant. It remains vacant because holds have been placed on the nomination and we have seen a filibuster-by-hold. The Department has done everything it can until this Senate confirms Mr. Wainstein. Obstruction from the other side of the aisle, Mr. President, is impeding efforts to improve national security. Long-term planning is being delayed and uncertainty is beginning to affect morale. The Department of Justice needs Mr. Wainstein on board, to provide leadership, vision and guidance. Again, like Ms. Fisher's stalled nomination, Democrat obstruction is impeding this effort to improve national security.

But Ms. Fisher and Mr. Wainstein are not the only nominees to face obstruction. Just looking back to a few others who were slotted to fill positions critical to our Nation's war on terror have likewise been filibustered. For instance, the current Deputy Secretary of Defense, Gordon England, was filibustered before the President was forced to recess-appoint him. He was eventually confirmed. Undersecretary of Defense for Policy, Eric Edelman, was filibustered, recess-appointed, and finally confirmed; and Office of the Director of National Intelligence General Counsel, Ben Powell, likewise was filibustered, recess-appointed and finally confirmed.

This obstruction is not limited solely to nominations. Who can forget how proud Democrats were when they celebrated killing the reauthorization of the PATRIOT Act, one of the most important anti-terror tools for our frontline law enforcement and intelligence agents. Democrats also complain that we are not doing all we can to secure the safety of our citizens, and then promote hyperbole and hysteria about the Terrorist Surveillance Program, which is well within the President's authority during wartime, to conduct critical battlefield intelligence-gathering against foreign threats to America.

I think the American people see through this Democrat obstruction. But nominations to critical national security positions should not face partisan road blocks. I recently read a newspaper report on the nomination of Mr. Wainstein. It reported that the office was ready, the phone lines up and the computers humming, waiting on him to start. But, his nomination is being blocked on reasons unrelated to him. This obstruction must stop.

I am glad Ms. Fisher will be confirmed later today and I hope that the Senate will be able to move on to Mr. Wainstein's nomination quickly so that we do not leave critical national security offices unfilled.

In closing, I am pleased that President Bush has nominated Ms. Fisher to serve as Assistant Attorney General and I look forward to her continued service in that post. I ask my colleagues to support her nomination.

The PRESIDING OFFICER (Mr. THUNE). The Senator from Michigan.

Mr. LEVIN. Mr. President, I listened to the Senator from Texas, but I do not want to debate the Wainstein nomination today because we have the Fisher nomination in front of us. I would just say one thing in response; that is, the delays in his confirmation vote are directly the result of the administration's obstruction of Senate requests for very relevant documents. Any delays can be placed right at the feet of the administration that has stonewalled requests for information. I hope the Senator from Texas and other Republicans would join in legitimate requests for relevant information. The documents that are being sought are directly related to Mr. Wainstein and

his role in the FBI as General Counsel from mid-2002 to mid-2003 and when he was the Chief of Staff for the FBI Director from mid-2003 to 2004.

So the delays here are directly attributable to the obstruction and the stonewalling of the administration in response to legitimate requests for documents. These impediments to votes can be easily removed by simply having the committee chairman join in the request for these documents, but that has not been forthcoming.

Today the issue is Ms. Alice Fisher. It is another example where requests for documents and for information have been denied. These are legitimate requests which directly relate to Ms. Fisher and to whether she should be confirmed. I want to get into the history of this matter in some detail. I yield myself 45 minutes for that purpose.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEVIN. Mr. President, today the issue of detainee abuse at Guantanamo Bay is very much on our minds and in the headlines as we debate how we will treat detainees in the future. In this context, the nomination of Ms. Alice Fisher for the position of Assistant Attorney General for the Criminal Division at the Department of Justice is not just a routine appointment. Alice Fisher was the deputy at the Criminal Division while the abuse at Guantanamo was occurring and while concerns about interrogation tactics were being raised within the Criminal Division at that same time. We are being asked to confirm Ms. Fisher today with unanswered relevant questions about any knowledge she may have had or actions she might have taken relative to those interrogation tactics.

I want to share with my colleagues longstanding unanswered questions regarding Ms. Fisher's nomination to this position. The constitutional duty of the Senate to provide its advice and consent to nominations is a solemn one. Instead of respecting this constitutional duty, the administration has consistently sought to thwart it by denying us relevant information.

The administration has put up barrier after barrier, hurdle after hurdle to efforts to get legitimate information that bears on Ms. Fisher's fitness to serve in this important position. Why the administration has stonewalled for so long instead of answering questions and providing information can only be speculated by me. Is it because it is part of an effort to prevent information about interrogation tactics from being provided to Congress, or does it relate directly to Alice Fisher? I don't know the answer, but the fact of the stonewalling is undeniable. It is part of a pattern of secrecy that this administration has engaged in in so many areas and so many ways.

The information I have sought relates to what Ms. Fisher knew about aggressive and abusive interrogation techniques in use at Guantanamo Bay,

Cuba, during the time that Ms. Fisher served as deputy head of the Criminal Division in the Justice Department from July 2001 to July 2003. From publicly released FBI documents, we have learned that FBI personnel raised serious concerns about these DOD interrogation tactics at weekly meetings between FBI and Department of Justice Criminal Division officials. I have sought to find out what Ms. Fisher knew about these FBI concerns over aggressive DOD methods; what, if anything, was reported to Ms. Fisher; and what steps, if any, she took in response.

If Ms. Fisher knew of aggressive interrogation techniques at Guantanamo and did nothing about it, or she knew about them but has denied knowing, then I would be deeply troubled. The administration has repeatedly obstructed efforts to get this information, information which is, in my judgment, relevant to Ms. Fisher's suitability for the position to which she is nominated.

The administration has literally and figuratively covered up the Guantanamo abuses. This refusal by the administration to provide relevant information is part of a larger pattern by the executive branch of denying the Senate the information needed to carry out confirmation and oversight responsibilities. Over and over again, the administration seems to use every means at its disposal to deny documents or information to the Senate, or to withhold key portions of documents, or to limit access to information.

It threatens to erode the Senate's constitutional obligations and responsibilities and the constitutional balance between the executive and legislative branches of Government. Senate acquiescence in the administration's refusal to provide relevant information undermines the fundamental principle of Congress as a co-equal branch of Government.

The story of the administration's concealing information about Guantanamo abuses began during a previous confirmation, that of Judge Michael Chertoff in early 2005 to head the Department of Homeland Security. Judge Chertoff had been the head of the Justice Department's Criminal Division, where Alice Fisher served as his deputy from July 2001 to July 2003. In preparing for the Homeland Security and Governmental Affairs Committee's hearing on Judge Chertoff's nomination, I became aware of a document bearing on what officials under Judge Chertoff's supervision knew, and therefore about what he might have known, about the mistreatment of detainees at Guantanamo. This document had been made public in response to a Freedom of Information Act, or FOIA, request.

The document, dated May 10, 2004, consists of a series of e-mails by an FBI agent—unnamed—recounting the concerns that FBI Agents as law enforcement personnel down at Guantanamo, had during 2002 and 2003. He was recounting what the FBI Agents saw in

those critical years when Ms. Fisher was the Deputy Director for the Criminal Division. It spoke about DOD interrogation techniques which “differed drastically” from methods employed by the FBI. It recounted “heated” conversations of FBI personnel with DOD officials.

There were heated conversations between FBI personnel and DOD officials about aggressive interrogation techniques. This FBI agent said that the Department of Defense has their marching orders from the Secretary of Defense and that the two techniques again differed drastically.

E-mails during those years recounting these heated conversations between the FBI which was objecting to the techniques being used at Guantanamo and DOD officials who were engaged in those techniques confirmed the serious FBI concern about what they saw at Guantanamo. FBI agents expressed alarm about the military’s interrogation plans, saying in an e-mail dated December 9, 2002: “You won’t believe it.” Also in that e-mail dated December 9, 2002, they included an outline of the coercive techniques in the military’s interviewing toolkit.

So you have the FBI on the one hand talking to their headquarters about coercive techniques being used against Guantanamo detainees, complaining about those details, and in one e-mail dated September 30, 2002, FBI agents were asked whether or not they could even work with the military interrogators. They were told that FBI agents had guidance to work with military interrogators “as long as there was no ‘torture’ involved.”

Think about it. We read the headlines in today’s newspapers of the techniques being used by the Department of Defense, the CIA and the Department of Justice. These are the headlines that we see in today’s papers. These are the events from which those headlines flow. These are e-mails back in 2002 and 2003 referring to coercive techniques that the FBI objected to, talking about heated conversations that the FBI was having with the Department of Defense over those techniques. That is what today’s story flows from.

Yet the FBI was finally told by their superiors that you can be present as long as no torture is involved.

FBI agents complained of DOD techniques in a number of settings, including to the generals at Guantanamo, to the DOD General Counsel here in Washington, and in video teleconferences with the Pentagon. According to FBI emails, a senior member of the Department of Justice Criminal Division was present at Guantanamo at the time of a “heated” video teleconference during late 2002. FBI officials were so concerned that their agents at Guantanamo received guidance during this period from headquarters “to step out of the picture” and “stand clear” when these aggressive interrogation techniques are being used. That is how deep this went.

This was all brought back to the Department of Justice when Alice Fisher was the deputy head of the Criminal Division. And if the Criminal Division people were deeply involved in these debates, was Ms. Fisher involved? What did she know about the aggressive tactics? What did she know about the objection of the FBI agent, which is part of the Department of Justice, to these techniques? That is what we have tried to find out over the last year and a half.

The May 2004 FBI document I mentioned describes how senior FBI officials communicated regularly with their Justice Department counterparts in the Criminal Division during the period in question, the period when Ms. Fisher was Deputy Director of Department’s Criminal Division. In these meetings, the FBI’s deep concerns about techniques employed by DOD personnel were discussed. Efforts to learn more began during Judge Chertoff’s confirmation as head of the Department of Homeland Security. He had been head of the Criminal Division during the time of these events, from April of 2002 through March of 2003 that Alice Fisher was his deputy.

Let me read from the May 2004 document. This was the highly redacted version which was available at the time of the Senate’s consideration of Judge Chertoff’s nomination. The document reads in part as follows:

In my weekly meetings with DOJ, we often discussed [redacted, blanked out] techniques and how they were not effective for producing intelligence that was reliable.

Then there is a series of blotted-out names of several individuals with the abbreviation SES after the names indicating the individuals were members of the Senior Executive Service. The document states that the named individuals “all from the Department of Justice Criminal Division” attended meetings with the FBI. Again, Alice Fisher was the Deputy Director of the Department of Justice Criminal Division at the time.

The document continues:

We all agreed [blank, redacted, covered over] were going to be an issue in the military commission cases. I know [blank] brought this to the attention of [blank].

That was the document that we were given during the Chertoff nomination. Clearly, the redacted information—the deleted portions of this document—was relevant. It included the names of senior Criminal Division officials participating in those meetings with the FBI agents. The administration withheld this information during Judge Chertoff’s confirmation hearing before the Homeland Security Committee of which I am a member.

On February 2, 2005 during his confirmation hearing, I asked Judge Chertoff about this document. In that hearing, Judge Chertoff could not say which Criminal Division officials were named in the document or even whether the weekly meetings referred to in the document occurred on his watch as

head of the Criminal Division. He could not recall any discussion about DOD’s interrogation techniques at Guantanamo “other than simply the question of whether interrogations or questioning down there was effective or not.”

Judge Chertoff further testified that he “had no knowledge” of the use of any interrogation techniques other than those that he described as “plain vanilla.”

We learned a few months after Judge Chertoff’s confirmation that the interrogation techniques the military was using at Guantanamo were anything but “plain vanilla.” The Defense Department investigation by Generals Schmidt and Furlow into the FBI allegations of detainee mistreatment at Guantanamo during the period of 2002 to 2003 found that interrogators at Guantanamo could subject detainees to numerous aggressive interrogation techniques. These included nudity, sleep deprivation, isolation, temperature extremes, both hot and cold, loud music and strobe lights and “gender coercion”; that is, inappropriate touching by female interrogators.

The report found that the interrogation of one high-value detainee involved many of these techniques as well as forcing the detainee to wear a dog leash and perform dog tricks; also forcing him to wear women’s underwear; strip searches; and 20-hour interrogations for 48 out of 54 days.

Here is what one of the persons in the Army helping to keep these detainees in custody wrote about her experiences. She wrote:

On a couple of occasions, I entered interview rooms to find a detainee chained hand and foot in a fetal position to the floor with no food or water, or care. Most times, they would urinate and defecate on themselves. They had been left there for 18 to 48 hours or more. On one occasion the air conditioning had been turned down so far the temperature was so cold in the room that the barefooted detainee was shaking with cold. When I asked the MPs on duty what was going on, I was told the interrogators the day prior had ordered this treatment and the detainee was not to be moved. The detainee was almost unconscious on the floor with a pile of hair next to him. He had apparently been literally pulling out his own hair throughout the night.

“Plain vanilla” is all that Judge Chertoff heard about. But members of his Division heard about those techniques, and we didn’t know that during the Chertoff nomination because the information was denied to us.

Other FBI documents include a partially redacted letter dated July 14, 2004 from Thomas Harrington, Deputy Assistant Director of the FBI’s Counterterrorism Division to Major General Donald Ryder, Commanding General of the Army’s Criminal Investigation Command.

Detainee highly aggressive, interrogation techniques at Guantanamo.

The subject line in the letter is “suspected mistreatment of detainees.”

The letter describes alleged incidences of abuse witnessed by FBI

agents as early as the fall of 2002. These include allegations of a female interrogator squeezing a male detainee's genitals, bending back his thumbs; an interrogator reportedly wrapping a detainee's head in duct tape; the use of a dog to intimidate a detainee.

The letter describes a detainee suffering from extreme mental trauma after being kept in isolation in a cell flooded with lights for 3 months.

The letter indicates these incidents and other FBI concerns were discussed with two officials in the DOD General Counsel's office in mid-2002.

There are two points to emphasize here. These events took place from 2002 to 2003 when Ms. Fisher was the Department's Director of the Criminal Division.

These events were reported to top level people in the Criminal Division.

The question is, What did she know about these events as Deputy Director of that Criminal Division? That is what we have tried to find out since her nomination. That is where we have been thwarted and frustrated and obstructed by the administration in getting information from them.

These are not some unknown people making these complaints to the Department of Justice's Criminal Division. This is our own FBI people who are strongly objecting to these aggressive DOD interrogation techniques. They were writing in. They were sending e-mails back to their headquarters about the military's coercive interrogations.

One e-mail said, "You won't believe it"—the techniques used and what they were involved with. At the same time, FBI personnel had weekly meetings with senior Criminal division officials discussing the Department of Defense techniques. Again, Michael Chertoff was head of that division at the time Alice Fisher was his deputy.

Other Department of Defense investigations into detainee abuse, in particular the report of Major General George Fay and the Schlesinger panel, concluded that it was some of these aggressive techniques in use at Guantanamo which migrated to Afghanistan and Iraq and were part and parcel of detainee abuse at Abu Ghraib and elsewhere. If the techniques at Guantanamo that I have just described sound familiar, it is, because the pictures of those techniques used at Abu Ghraib became painfully familiar to us and to the world.

That Judge Chertoff did not recall any discussions about DOD interrogation techniques other than perhaps whether they were effective, never heard of a discussion about abuses, aggressive techniques being used by the Department of Defense, Judge Chertoff did not recall any knowledge, did not have any knowledge about who in his division might have engaged in such discussions or when those discussions might have taken place, should not have been the end of the Senate inquiry into this matter. If the Senate

had access to the names listed in the May 2004 FBI document at the time of Judge Chertoff's confirmation, we would have tried to refresh Judge Chertoff's recollection about the conversations referred to in these documents.

The Senate clearly had a right to find out the names of these Department of Justice Criminal Division officials and ask them what they knew about these interrogations, what if anything they reported, what actions if any were taken. The Senate was frustrated and thwarted by an administration that wanted to cover up what was going on in the area of interrogation of detainees at Guantanamo.

In February of 2005, Senator LIEBERMAN and I wrote to FBI director Mueller requesting that he provide an unredacted version of the May 2004 document referring to the weekly FBI Criminal Division meetings or, if a copy was not provided, then provide a legal justification for denying us the unredacted document.

In letter dated 3 days later, February 7, 2005, the Department of Justice—not the FBI but the Department of Justice—wrote to deny the request. The Justice Department claimed that an unredacted copy could not be provided because it contained "information covered by the Privacy Act . . . as well as deliberative process material." A few days later, on February 10, Senator LIEBERMAN and I wrote to the Attorney General requesting that he reconsider his decision not to provide an unredacted copy of the May 2004 FBI document.

Despite repeated requests, the Justice Department refused to provide either an unredacted copy of the May 10, 2004 e-mail or information on the names of the FBI and the Department of Justice personnel redacted from the document prior to the Senate confirmation vote on February 15, 2005 of Judge Chertoff, the Secretary of the Department of Homeland Security.

The Justice Department's refusal to provide this information based on the Privacy Act was a misuse of that statute. The Privacy Act was designed primarily to prevent the U.S. Government from disclosing personal information about private individuals who have not consented to that disclosure. That act is not intended to authorize the Government to conceal from Congress the names of public officials engaged in Government conduct funded with taxpayers dollars. Invoking the Privacy Act to deny the Senate relevant information regarding a nomination before the Senate was an abusive and dangerous precedent, and we were determined not to let it stand.

The excuses used to deny us an unredacted May 2004 document went beyond any assertion that a U.S. Senate has ever accepted from any administration as far as I can determine. There is no claim of executive privilege, and the document itself has no bearing on any advice given to the

President. The particular FBI document that Senator LIEBERMAN and I sought, and the other documents that I have referred to, dramatize the refusal of the administration to be straight with the American people and with the Congress relative to the detainee abuse issue.

The thwarting of congressional oversight over this and so many other issues is deeply ingrained in this administration. The executive branch is determined to seize any crumb of justification to prevent Congress's access to executive branch documents needed to carry out our constitutional responsibilities of confirmation and oversight.

We found out a month after the Senate confirmed Judge Chertoff to head the Department of Homeland Security the redacted portions of the May 2004 FBI e-mail were, indeed, very relevant to Judge Chertoff's nomination. On March 18, 2005, the Justice Department finally responded to our February 10, 2005 letter, a letter from Senator LIEBERMAN and myself, asking the Department to reconsider its decision to withhold an unredacted copy of the May 2004 document. In its May 2005 response, the Justice Department stated it had reviewed the May 2004 FBI e-mail and provided a new version of the document, somewhat less redacted than previously.

While significant information continued to be withheld, including the name of the FBI agent who authored the e-mail, the new version contained new information, including the names of the four Department of Justice Criminal Division officials who had regularly met with FBI personnel concerned about Department of Defense interrogation techniques.

Specifically, the named Criminal Division officials who, according to this e-mail, were present at those meetings, discussing those interrogation techniques, were Alice Fisher, who served as Judge Chertoff's deputy, Dave Nahmias, then counsel to Judge Chertoff within the Criminal Division, and two other senior Criminal Division officials, Bruce Swartz and Laura Parsky. Also newly revealed was that one Criminal Division official, Bruce Swartz, had brought concerns about Department of Defense tactics to the attention of the Department of Defense Office of General Counsel.

On May 2, 2005, I wrote to Attorney General Gonzales requesting the name of the author of that May 2004 e-mail. Who was the FBI agent who wrote that e-mail naming those persons? I also requested an opportunity to interview both the FBI and the Department of Justice personnel named in that document, including, specifically, senior Justice Department officials David Nahmias, Bruce Swartz, and Laura Parsky.

I don't think there is any doubt that information would be relative to the

nomination of Judge Chertoff. The administration essentially told us, however, to trust them, that the information and interviews we were seeking were not relevant to Judge Chertoff's nomination.

Yes, it was.

This saga, the pattern of withholding relevant information about Guantanamo abuses continued in relation to Alice Fisher's nomination in April 2005 to fill the position vacated by Judge Chertoff, the head of the Criminal Division of the Department of Justice.

Remember, Ms. Fisher was specifically named by the FBI agent in the May 10, 2004 e-mail as having attended weekly FBI Department of Justice meetings where DOD interrogation techniques were discussed. The name of the agent, however, was still redacted. There was still, and is to this day, stonewalling and obstruction to legitimate requests of Senators who must vote under the Constitution on the confirmation of these appointees.

I ask unanimous consent to have a chronology of my attempts to get information relative to the Alice Fisher nomination printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CHRONOLOGY RELATING TO THE NOMINATION OF ALICE FISHER FOR ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION—AS OF SEPTEMBER 2006

Feb. 4, 2005: First Levin-Lieberman request (to FBI Director Robert Mueller) for an unredacted copy of the May 10, 2004 FBI e-mail referring to weekly DOJ-FBI meetings at which DoD interrogation techniques were discussed.

Feb. 7, 2005: DOJ response denies the Levin-Lieberman request for unredacted copy of May 10, 2004 FBI e-mail.

Feb. 10, 2005: Second Levin-Lieberman request (to Attorney General Alberto Gonzales) for an unredacted copy of the e-mail.

Mar. 10, 2005: DOJ response provides a revised version of the May 10, 2004 FBI document with fewer redactions. New version includes a reference to Alice Fisher as one of the senior officials attending meetings where FBI agents expressed concerns about interrogation techniques at Guantanamo Bay.

April 4, 2005: Alice Fisher nominated for Assistant Attorney General of DOJ Criminal Division.

April 6, 2005: DOJ letter to Senator Levin supplementing the February 10, 2005 Levin/Lieberman letter, including third version of May 10, 2004 document with additional text restored. Name of e-mail's author remains redacted.

May 2, 2005: Levin letter to Attorney General Gonzales requesting again that DOJ provide the names of the author of the e-mail and other FBI personnel still redacted from the May 10, 2004 document and for an opportunity to interview FBI and DOJ personnel named in that document.

May 12, 2005: Judiciary Committee holds hearing on Fisher nomination.

May 2005: In response to written questions from Judiciary Committee member Senator Richard Durbin, Fisher states she did "recall general discussions about interrogations at Guantanamo Bay" but did "not recall that interrogation techniques were discussed" at weekly meetings between DOJ and FBI. She states she does "recall being aware of FBI

concerns about interviews" but "cannot recall the content of specific meetings about detainee interrogation at Guantanamo Bay."

June 7, 2005: In response to second set of written questions from Senators Durbin and Kennedy, Fisher says she does "not recall FBI personnel or anyone else expressing to me allegations about mistreatment of detainees at Guantanamo Bay." She states that she "cannot reconcile my recollection with statements contained in the (May 10, 2004) e-mail. . . ."

June 14, 2005: Senators Durbin, Kennedy, and Levin interview Alice Fisher. Fisher says she does not recall FBI expressing concerns about interrogation techniques at Guantanamo Bay, other than concerns about their effectiveness.

June 16, 2005: Judiciary Committee reports Fisher nomination. Nomination placed on the Senate Executive Calendar.

June 29, 2005: Levin letter to Attorney General Gonzales asking for a reply to his May 2, 2005 letter and renewing requests for information and interviews of David Nahmias, Laura Parsky, Bruce Swartz, and other officials named in the May 10, 2004 e-mail.

July 26, 2005: DOJ Letter to Judiciary Committee Chairman Arlen Specter stating that the author of the May 10, 2004 FBI e-mail now says that he "did not have conversations with Ms. Fisher nor does he recall conversations in Ms. Fisher's presence about the treatment of detainees at Guantanamo Bay."

July 29, 2005: Letter from Attorney General Gonzales to Minority Leader Harry Reid stating that the steps the Department has taken in response to Senators' concerns "are sufficient for the Senate to make an informed decision" about the Fisher nomination.

August 19, 2005: Levin letter to DOJ Inspector General Glenn Fine inquiring about issues to be reviewed by the on-going IG investigation into FBI allegations of detainee mistreatment by DOD personnel at Guantanamo Bay. Among issues Senator Levin recommends be reviewed is "the extent to which Ms. Fisher was aware of FBI concerns about detainee interrogations and efforts to convey these concerns to DOD and others."

August 31, 2005: Alice Fisher receives recess appointment from President Bush to become Assistant Attorney General of DOJ Criminal Division.

Sept. 16, 2005: DOJ IG Fine letter to Levin indicating that ongoing review of FBI personnel's allegations regarding detainee abuse at Guantanamo will include issues relating to "the role of Alice Fisher, Assistant Attorney General for the Criminal Division, and other Department officials regarding detainee interrogation techniques."

Sept. 19, 2005: Alice Fisher is re-nominated for Assistant Attorney General of DOJ Criminal Division.

Sept. 29, 2005: Minority Leader Reid letter to Attorney General Gonzales requesting that DOJ provide interested Senators with the opportunity to interview relevant FBI and DOJ personnel.

Dec. 15, 2005: At meeting with Attorney General Gonzales and White House Counsel Harriet Miers, Senator Levin requests meeting with FBI agent who authored the May 2004 e-mail without DOJ representative present, but offers compromise of having DOJ IG representative sit in on the meeting.

July 25, 2006: Senator Specter letter to Attorney General Gonzales requesting to set up an interview between Senator Levin and the FBI Agent.

July 25, 2006: Levin letter to Attorney General Gonzales requesting to meet with the FBI Agent with Senator Specter, and an IG representative present, or alternatively, a representative from the FBI's Office of General Counsel (OGC).

July 26, 2006: DOJ letter to Levin agreeing to the request to make FBI Agent available to be interviewed with a representative from the FBI OGC present, but asserting that questions must be limited to those related to "the agent's factual knowledge of communications to Ms. Fisher about the treatment of detainees at Guantanamo Bay."

July 26, 2006: Levin letter to DOJ clarifies that Senator Levin intends to ask the FBI agent "any question which I consider relevant to the nomination of Alice Fisher."

July 26, 2006: Senators Levin and Specter meet with the FBI Agent, as well as FBI General Counsel Valerie Caproni. FBI Agent recalls only one FBI-DOJ meeting where Alice Fisher was present but states he had regular conversations with two Criminal Division officials, David Nahmias and Bruce Swartz, regarding DoD interrogation techniques. The FBI Agent told Mr. Nahmias that the DoD interrogation of one detainee was "completely inappropriate."

August 1, 2006: Levin letter to Attorney General Gonzales again requesting to interview David Nahmias and Bruce Swartz.

August 30, 2006: DOJ Letter to Levin requesting a vote on Ms. Fisher's nomination. The letter does not address Senator Levin's request for interviews of David Nahmias and Bruce Swartz.

Sept. 12, 2006: Levin letter to Attorney General Gonzales reiterating request to interview David Nahmias and Bruce Swartz, but proposing in the alternative that they provide answers to questions included with the letter.

Mr. LEVIN. Let me summarize these efforts. Alice Fisher was first asked in written questions what she knew or heard about these FBI concerns. In her answers, Ms. Fisher stated that she recalled regular meetings between the FBI and Department of Justice Criminal Division officials but did not "recall that interrogation techniques were discussed at these meetings." She stated, also, that she did recall "general discussions" with Judge Chertoff, who was heading the Criminal Division, about the "effectiveness" of DOD interrogation techniques and methods compared to the FBI's methods.

On June 14, 2005, Senators KENNEDY, DURBIN, and I interviewed Ms. Fisher regarding her recollections of FBI concerns about Department of Defense interrogation techniques. At that meeting, she stood by her statement that she did not "recall" FBI officials expressing concerns about Department of Defense methods at Guantanamo other than general concerns about their effectiveness.

To attempt to resolve the conflict in those statements, I wrote to Attorney General Gonzales in June of 2005 requesting a response to my request originally made on May 2, 2005 for the name of the FBI agent who authored the e-mail and for an opportunity to interview the Criminal Division officials named in that document, including David Nahmias, Bruce Swartz, and Laura Parsky. So May of 2005 is the first time I made the request for the name of the FBI agent who authored the e-mail and an opportunity to interview the named Criminal Division officials that were listed in that document—Nahmias, Swartz and Parsky.

On July 26, 2005, the Justice Department wrote the Judiciary Committee

Chairman ARLEN SPECTER, responding to Senator SPECTER's request for information about the May 2004 e-mail. In that letter, the Department provided a summary of an interview it had conducted with the FBI agent who authored the e-mail regarding what he knew of conversations with Alice Fisher.

In that letter, the Department said:

[the FBI agent] did not have conversations with Ms. Fisher nor does he recall conversations in Ms. Fisher's presence about the treatment of detainees at Guantanamo Bay. He did participate in conversations with Ms. Fisher and other department and FBI representatives about a specific detainee and that detainee's links to law enforcement efforts. These discussions focused on the information gathered regarding the information and individual and his associations, but not on his treatment or interrogation.

The letter also stated that the unnamed FBI agent's conversation with Ms. Fisher:

... focused on the particular detainee described above and predated the broader conversations [in the weekly meetings] about DOD techniques with other department representatives.

And the letter concluded by expressing the hope that this would resolve any outstanding questions about Ms. Fisher's nomination.

A few days later, the Attorney General wrote to the minority leader, Democratic Leader HARRY REID, stating that the Department had taken steps in response to the Senator's concerns "sufficient for the Senate to make an informed decision" on Alice Fisher's nomination. In essence, what the Justice Department was saying, they will do the interview; trust them. It is up to them to decide on the sufficiency of information for the purpose of Senate confirmation. The Department was unwilling to trust Senators with the name of the FBI agent who had written e-mails despite the fact that the Senate, on a regular basis, has access to sensitive documents and information which frequently contains the names of FBI agents.

On this important issue of Senate advice and consent to a nomination, the Department was refusing to provide Senators with information relevant to our constitutional duty.

I requested that the nomination of Ms. Fisher not be considered until I had the opportunity to get the relevant information I had been seeking. The administration continued to refuse to provide the information and instead made a recess appointment of Alice Fisher to head the Criminal Division in August of 2005, and she was renominated in September of 2005.

In December of 2005, Attorney General Gonzales offered to make the FBI agent available to be interviewed by me if a Department of Justice official could be present. I declined an interview under these terms but told Attorney General Gonzales I could accept having someone from the Department of Justice Inspector General's office present.

This led to more delay, more stonewalling by the Department of Justice until this past June. With the help of the chairman of the Judiciary Committee, Senator SPECTER, and others, the Justice Department finally agreed to make the FBI agent who authored the e-mails available to be interviewed.

On July 26 of this year, more than 1 year after my request for the FBI agent's name, Senator SPECTER and I, along with FBI General Counsel Caproni, met with the FBI agent—1 year, delayed by the administration, simply providing access to the FBI agent who wrote a critically important e-mail.

There was reference made about the Senate obstructing the nomination.

(Mr. CHAFEE assumed the Chair.)

Mr. LEVIN. Mr. President, the obstruction here should be directly laid at the feet of the administration which, for 1 year, refused access to an FBI agent who wrote a critically important memo regarding detainee abuse at Guantanamo and whether Ms. Fisher had any knowledge of that and, if so, what she did relative to that knowledge.

The FBI agent said in the interview that he recalled Ms. Fisher attended only one of the weekly meetings, which dealt primarily with the relationship between a particular high-value detainee and the 9/11 hijackers. He also stated that he had "frequent conversations" with David Nahmias, counsel to the Criminal Division's head, Mr. Chertoff. That is now the issue which comes before the Senate.

Just a couple of months ago, it was finally provided to the Senate that an FBI agent says he had frequent conversations about the issue of interrogation techniques at Guantanamo with the counsel, the attorney to the head of the Criminal Division of which the current nominee was the deputy. This is the same David Nahmias named in that FBI agent's May 2004 e-mail regarding FBI concerns about aggressive DOD techniques. The FBI agent added that he specifically shared with Mr. Nahmias his view that interrogation methods used on one detainee were "completely inappropriate." This is the same David Nahmias I have repeatedly sought to interview since May of 2005.

Compare these statements of the FBI agent when interviewed in person to the assurances the Justice Department made in their July 2005 letter about the FBI agent's discussions with the Criminal Division officials, including Alice Fisher. The Justice Department wrote that the discussions at the meeting attended by Alice Fisher "focused on the information gathered" from one specific detainee "but not on his treatment or interrogation. . . ." The Justice Department never said that the FBI agent had "frequent conversations" about interrogation techniques being used at Guantanamo with David Nahmias, counsel to the head of the

Criminal Division, or less frequent conversations with Bruce Swartz, also a Deputy Assistant Attorney General in the Criminal Division. That wasn't disclosed—very critical information, which is the subject now of the debate. Why can we not get questions answered from David Nahmias, who we now believe, acting as counsel to Chertoff, head of the Criminal Division, of which Alice Fisher was the deputy—why can we not get David Nahmias to answer questions as to whether he shared those deeply held concerns, which were shared with him by FBI agents at Guantanamo, with Alice Fisher, the deputy head of the Department?

Following the interview, I also learned of a December 11, 2002, e-mail to Mr. Nahmias from the FBI agent I interviewed, asking for his comments on "legal issues regarding Guantanamo Bay," which were apparently set out in an attachment to that e-mail.

The FBI agent's statements to me in that December 11, 2002, e-mail reveal that FBI personnel raised concerns with senior Department of Justice Criminal Division officials, including David Nahmias and Bruce Swartz, that went beyond simply questions about the "effectiveness" of Department of Defense techniques, which was the only FBI concern that both Chertoff and Ms. Fisher could recall during their confirmation proceedings—the only concern they ever heard about the effectiveness of DOD techniques, despite a raging debate between the FBI and the Department of Defense about the aggressiveness of those techniques and whether those techniques were abusive and indeed illegal.

To try to determine whether those FBI concerns were shared with Nahmias, counsel to the Criminal Division, and were shared with the deputy head of that Criminal Division, Ms. Fisher, I wrote to Attorney General Gonzales on August 1, 2006, to renew for the third time my request to interview these two senior Criminal Division officials, David Nahmias and Bruce Swartz.

This is a highly relevant request. The FBI agent said he discussed the Department of Defense interrogation tactics during regular meetings with Mr. Nahmias and Mr. Swartz. Mr. Nahmias was counsel to Assistant Attorney General Chertoff, who was head of the Criminal Division. Alice Fisher and Bruce Swartz were both deputies in that division. Alice Fisher was in charge of overseeing terrorist suspect prosecutions. FBI objections to aggressive DOD interrogation tactics were a major issue, a raging issue, according to numerous e-mails sent back and forth from Guantanamo to Washington. This issue was so intense that FBI agents were wondering whether they could even be present during interrogation. They were so intense that FBI agents were writing back to headquarters saying: Can you believe what is going on down there? These differences between the FBI and the Department of Defense were so intense

that there were regular discussions, meetings, debates, and heated conversation over the tactics being used by the DoD at Guantanamo that the FBI rejected, reacted to, and shared with their headquarters.

All we needed to do—and we still need to ask—is ask, Did Mr. Nahmias and Mr. Swartz talk to the deputy head of the Criminal Division about those concerns? Did they talk to Alice Fisher about those concerns? Alice Fisher may not recall hearing about those concerns, about abusive and aggressive tactics, but they might recall talking to her about them. If the administration has its way, we will never know. We are never going to know whether David Nahmias and Bruce Swartz discussed with Alice Fisher what we now know they knew about in their capacities—one as counsel to the Criminal Division, of which she was the deputy, and the other as a deputy director of that division.

In an August 30 response, the Justice Department ignored my request to interview Mr. Nahmias and Mr. Swartz, urging instead that the Senate proceed to a vote on Ms. Fisher's nomination. On September 12, a week ago, I wrote back, reiterating my request for an interview, offering in the alternative that Mr. Nahmias and Mr. Swartz respond to just a set of questions I had provided. The Justice Department has not responded to this letter.

So the Justice Department stalled for 1 year in allowing me access to an FBI agent whose information is clearly relevant to this nomination; for 1 year, they stonewalled; for 1 year, they stood in the way of information coming to the U.S. Senate; for 1 year, they set up a roadblock to a Senator who is making a request that is clearly relevant to the fitness of a person to serve as head of the Criminal Division of the Department of Justice of the United States. And then finally I am given access to that agent 1 year later. And when that agent discloses that he, in fact, shared concerns about aggressive interrogation techniques with two other individuals who were working at the Criminal Division with Ms. Fisher, and when I simply say I want to talk to those two people to see if they shared those concerns with Ms. Fisher because she denied ever hearing concerns about aggressive techniques, of course, I have been denied that.

The stonewalling continues. Obstruction by the Department of Justice of access to information relevant to the nomination of Alice Fisher continues to this day.

When I wrote the Attorney General on September 12 saying: OK, if we cannot meet with these two witnesses, at least would you ask them to answer questions as to whether they shared this information they had heard about these techniques being used at Guantanamo, there is no answer from the Department of Justice. They are silent. The current form of stonewalling and obstruction by the Department of Jus-

tice of information that is relevant to this nomination is silence.

There is one other important background fact I wish to bring to the attention of the Senate. The Justice Department's inspector general has been investigating for over a year now the allegations by FBI personnel of having observed the mistreatment of detainees at Guantanamo, Abu Ghraib, and elsewhere. The inspector general of the Justice Department, Glenn Fine, has assured me that this review will look into "the role of Alice Fisher, Assistant Attorney General for the Criminal Division, and other Department officials regarding detainee interrogation techniques." We have been waiting for the IG's findings for many months. The Senate is about to vote on Ms. Fisher's nomination before the IG report comes out.

The delay in voting on the confirmation of this nominee is directly attributable to the administration stonewalling on requests for relevant information from the Senate. Ms. Fisher is in place. She is in office. She is in an acting capacity. I have had a standing request to interview former Department of Justice Criminal Division officials, seeking relevant information, since May of 2005. This is not a last-minute request to talk to Messrs. Nahmias and Swartz. I have made four requests since May of 2005 to interview the two of them.

What is new here is that now we know, in addition to them being named in the e-mail I referred to, now we know from an FBI agent, the unnamed author of that e-mail, that he shared with those two men at the Criminal Division—one being counsel and one being a deputy director—that he shared with them the aggressive techniques, abusive techniques I have outlined, which were being utilized at Guantanamo.

Why stonewall? Why not simply just ask Mr. Nahmias and Mr. Swartz the questions I have submitted to the Department of Justice? What is behind this?

By the way, I ask unanimous consent that the questions I asked the Attorney General to submit to Mr. Nahmias and Mr. Swartz be printed in the RECORD at this time.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

QUESTIONS FOR DAVID NAHMIAS

1. BACKGROUND

A. What was your position during Ms. Alice Fisher's tenure as Deputy Assistant Attorney General in the Criminal Division (July 2001 to July 2003)?

B. What was your professional relationship with Ms. Fisher? Did you report to her?

2. FBI CONCERNS REGARDING DoD INTERROGATION TECHNIQUES

The FBI agent whom I interviewed on July 26, 2006, (the "FBI Agent") stated that he had "frequent contacts" with you, during which he shared his concerns regarding aggressive Defense Department (DoD) interrogation techniques at Guantanamo Bay.

A. Did you have frequent contacts with the FBI Agent? If so, how frequently?

B. Were you aware of FBI personnel's concerns regarding aggressive DoD interrogation techniques? If so, what were these concerns?

C. Were you aware of FBI personnel's concerns regarding legal issues associated with DoD interrogation techniques? If so, what were those legal concerns?

D. Were you aware of FBI personnel's concerns about the alleged mistreatment of detainees? If so, what were those concerns? Did you ever hear of any incidents of detainee mistreatment at Guantanamo?

E. Did you at any time discuss FBI concerns regarding DoD interrogation techniques or the mistreatment of detainees with Alice Fisher? If not, why not? If so, please describe when these discussions occurred and what was said.

F. Did you at any time discuss FBI concerns regarding DoD interrogation techniques or the mistreatment of detainees with Bruce Swartz, Laura Parskey, or other DOJ officials in the Criminal Division? If not, why not? If so, please identify with whom you discussed these concerns, when, and what was said.

3. MAY 10, 2004 DOCUMENT

A May 10, 2004 email authored by the FBI Agent stated: "In my weekly meetings with DOJ we often discussed DoD techniques and how they were not effective or producing intel that was reliable. Bruce Swartz (SES), Dave Nahmias (SES), Laura Parskey (now SES, GS-15 at the time) and Alice Fisher (SES Appointee) all from DOJ Criminal Division attended meetings with FBI. We all agreed DoD tactics were going to be an issue in the military commission cases. I know Mr. Swartz brought this to the attention of DoD OGC."

A. Please identify the FBI and DOJ personnel who attended these meetings. How frequently did Alice Fisher attend these meetings?

B. How often were DoD interrogation techniques discussed at these weekly meetings? During what time period did these discussions occur?

C. Did you believe that DoD interrogation techniques would be an issue for the military commissions? If so, in what way?

During my interview with the FBI Agent, he recalled one DOJ-FBI meeting where Ms. Fisher was present. The FBI Agent stated that the main subject of that meeting was the possible relationship between a particular high value detainee at Guantanamo and the 9/11 hijackers, but also discussed was how the Defense Department was "pushing hard" on the FBI on-site commander to "speed up" getting information out of this particular detainee and others.

D. Do you recall the DOJ-FBI meeting at which Ms. Fisher was present and FBI concerns about DoD "pushing hard" on FBI personnel to "speed up" getting information was discussed?

E. What actions were taken in response to these concerns?

4. DECEMBER 11, 2002 DOCUMENT

A December 11, 2002 email from the FBI Agent to you is entitled "Fwd: Legal Issues re: Guantanamo Bay" and requests your comments, apparently on an attachment to that email.

A. Are you familiar with this email?

B. Did the legal issues raised in this email relate to DoD interrogation techniques at Guantanamo Bay?

C. Did you bring this email to the attention of Ms. Fisher? Did you discuss the legal issues raised in this email with her? If so, what actions were taken in response?

D. Please provide a copy of any communication you provided in response to the December 11, 2002 document.

QUESTIONS FOR BRUCE SWARTZ

1. BACKGROUND

A. What was your position during Ms. Alice Fisher's tenure as Deputy Assistant Attorney General in the Criminal Division (July 2001 to July 2003)?

B. What was your professional relationship with Ms. Fisher? Did you report to her?

2. FBI CONCERNS REGARDING DOD INTERROGATION TECHNIQUES

The FBI agent whom I interviewed on July 26, 2006, (the "FBI Agent") stated that he had "contacts" with you during the period when FBI personnel at Guantanamo Bay were raising concerns regarding aggressive Defense Department interrogation techniques.

A. Did you have contact with the FBI Agent? If so, how often?

B. Were you aware of FBI personnel's concerns regarding aggressive DoD interrogation techniques? If so, what were these concerns?

C. Were you aware of FBI personnel's concerns regarding legal issues associated with DoD interrogation techniques? If so, what were those legal concerns?

D. Were you aware of FBI personnel's concerns about the alleged mistreatment of detainees? If so, what were those concerns? Did you ever hear of any incidents of detainee mistreatment at Guantanamo?

E. Did you at any time discuss FBI concerns regarding DoD interrogation techniques or the mistreatment of detainees with Alice Fisher? If not, why not? If so, please describe when these discussions occurred and what was said.

F. Did you at any time discuss FBI concerns regarding DoD interrogation techniques or the mistreatment of detainees with David Nahmias, Laura Parsky, or other DOJ officials in the Criminal Division? If not, why not? If so, please identify with whom you discussed these concerns, when, and what was said.

3. MAY 10, 2004 DOCUMENT

A May 10, 2004 email authored by the FBI Agent stated: "In my weekly meetings with DOJ we often discussed DoD techniques and how they were not effective or producing intel that was reliable. Bruce Swartz (SES), Dave Nahmias (SES), Laura Parsky (now SES, GS-15 at the time) and Alice Fisher (SES Appointee) all from DOJ Criminal Division attended meetings with FBI. We all agreed DoD tactics were going to be an issue in the military commission cases."

A. Please identify the FBI and DOJ personnel who attended these meetings. How frequently did Alice Fisher attend these meetings?

B. How often were DoD interrogation techniques discussed at these weekly meetings? During what time period did these discussions occur?

C. Did you believe that DoD interrogation techniques would be an issue for the military commissions? If so, in what way?

During my interview with the FBI Agent, he recalled one DOJ-FBI meeting where Ms. Fisher was present. The FBI Agent stated that the main subject of that meeting was the possible relationship between a particular high value detainee at Guantanamo and the 9/11 hijackers, but also discussed was how the Defense Department was "pushing hard" on the FBI on-site commander to "speed up" getting information out of this particular detainee and others.

D. Do you recall the DOJ-FBI meeting at which Ms. Fisher was present and FBI concerns about DoD "pushing hard" on FBI personnel to "speed up" getting information was discussed?

E. What actions were taken in response to these concerns?

4. DISCUSSIONS WITH DOD OFFICIALS

In the May 10, 2004, document regarding FBI concerns over DoD interrogation techniques, the FBI Agent states "I know Mr. Swartz brought this to the attention of DoD [Office of General Counsel (OGC)]." In her written answers during the confirmation process, Alice Fisher recalled discussing FBI concerns about the effectiveness of DoD interrogation techniques with members of the DoD OGC, or being present when such discussions took place. Did you bring FBI concerns regarding DoD interrogation techniques to the attention of DoD OGC? If so, please identify any meetings or discussions with DoD OGC in this regard, when and where those meetings or discussion occurred, and what was discussed. Did Ms. Fisher participate in any such meeting or discussion?

Mr. LEVIN. Mr. President, why is the administration more interested in keeping information from the Senate relevant to the knowledge of senior Department of Justice Criminal Division officials, including Alice Fisher, of the administration's policies and practices on the interrogation of detainees?

What is going to happen again is that the administration's obstructionism will result in the Senate acting without relevant information. I know there will be many who will say we have more than enough information, and for many in this body, they have every right to vote based on the information they have. But when any Member of this body seeks relevant information on a confirmation, every Member of this body ought to stand in unison behind that request.

We are all either going to be or have been in the position of seeking relevant information to a confirmation. We have all been in this position, and many of us will be in this position again. This should be treated as an institutional matter.

There is no reason these questions that have been addressed to Mr. Nahmias and Mr. Swartz should not be answered. I believe this body, as a body, should ask the Attorney General to have these questions answered. There is no reason any relevant information to a confirmation should be denied to a Senator, providing the information is relevant and germane, and clearly this is.

Again, I want to emphasize, this is not a last-minute request. This is something which arose from a meeting that was held with the FBI agent in question back in July. But the request for these meetings with Messrs. Swartz and Nahmias were made as early as May of 2005. They have been asked for on four occasions since then.

Do David Nahmias and Bruce Swartz recall the FBI agent sharing his concerns about aggressive DOD interrogation techniques? He does. Do they remember? Did those two senior officials share those FBI concerns about DOD techniques with Alice Fisher? If so, what was her response? These are directly relevant questions.

The pattern of this administration is transparent. The administration stone-walls on providing requested information. It then accuses Senators of delay

and demands that the Senate act to confirm their nominees without the information. The administration follows this pattern because it works, and it works because this institution allows it to work.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator has 32 minutes remaining.

Mr. LEVIN. I reserve the remainder of my time, and I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I think Alice Fisher is a fine person. My colleague and those on the other side are never happy with whatever the President does to try to protect this country.

He looked the American people in the eye—after he was elected, we had 9/11—and he said: I am going to use every power I have to prosecute, investigate, and stop those who threaten the safety of the American people. That is my responsibility as Commander in Chief. I took an oath to do that, and I intend to do that.

And he appointed some good people. Now all we have had is second-guessing, second-guessing, second-guessing, complaint, complaint, complaint, hold up nominees; never happy.

Somebody has to do something. I remember right after 9/11. What happened? We had a national epiphany. We found out in a spasm of political activity years ago, just like in many ways today, the Congress, to placate critics and liberals and activists, prohibited the FBI from talking to the CIA. They prohibited CIA agents because they heard some of them had made a mistake somewhere—there were allegations of that—that they couldn't talk, when they were out doing undercover operations trying to obtain human intelligence in dangerous areas of the world, with people who had criminal records and might have done something wrong.

What happened after 9/11? We said: Why didn't we have any human intelligence? What are the problems here? What we concluded was that both of those proposals, for example, were wrong, and we promptly reversed them. We changed the law.

That is all I am saying about this flap—and I have been involved with it on the Armed Services Committee, and I have been involved with it on the Judiciary Committee. We have had 30 or more hearings investigating the people of this country who are trying to preserve, protect, and defend this Nation. That is who we investigate and complain about. Do we ever hear about how to better catch the terrorists? It is time we start thinking about defending and protecting this country rather than to prosecute and block and obstruct those who have been giving their every waking moment to make us safer.

My good colleague from Michigan is such an able Senator. I am sorry this

didn't all work out to his satisfaction. The Department of Justice, the administration offered this, he didn't like that. They offered that, he didn't like that. Maybe sometimes one gets to thinking there has been a little strategy around here—and I have seen it in case after case that began with Miguel Estrada—for the Members on the other side to demand records, statements, internal conversations, internal memoranda to which they are not entitled. They don't want people coming in and demanding everything they said to everybody who came into their office. So they come up with this, and they ask for all these items. Then when they don't get them, they say: Obstruction, obstruction; we can't vote for the nominee. Now they have created an excuse to vote against a very fine nominee, when the person is doing an excellent job and ought to be confirmed so they can continue to be even more effective in the war against terror.

I have seen it time and again. With regard to the Sixth Circuit Court of Appeals, one of our Senators down here complaining had a whole host of those nominees held up for years. The court ended up deciding the University of Michigan higher education, affirmative action case with far less judges than should have been on that panel. There has been some real concern expressed about that.

Obstructing, holding up, and delaying nominees is not the right thing to do. We have important governmental actions to do here.

Let me tell my colleagues about Alice Fisher. She has proven herself in the Criminal Division. Under her leadership, the division has made a number of great strides. The Criminal Division has been responsible for the national coordination of all national security prosecutions, of all the criminal cases in Federal court, including domestic and international terrorism and counterintelligence matters.

Alice Fisher has also worked closely with the intelligence community. That is her responsibility. We had too much of a wall of separation. Sure, she is to be engaged in these issues to assess potential threat information to our national security and disrupt potential attacks against this country.

Alice Fisher provides advice to U.S. attorneys. I was a U.S. attorney for 12 years. There are 93 of them around this country covering the whole country. She provides them advice on terrorism matters, including such areas as terrorist acts in the United States and abroad, weapons of mass destruction, principles of extraterritorial jurisdiction, and use of classified evidence and intelligence information in prosecutions. Alice Fisher also established the Office of Justice for Victims of Overseas Terrorism.

During her tenure, the division's counterterrorism section, which Fisher also had previously organized and supervised as Deputy Assistant Attorney General, has prosecuted numerous

“material support” terrorism cases, cases against people who have given material support to terrorists to further their ability to attack and kill innocent people in this country and abroad. Those prosecutions have been located throughout the country and include alleged planners supporting terrorism in Georgia, Ohio, Florida, New York, Virginia, and California; defendants facing extradition from the United Kingdom and other foreign countries; international terrorist organizations, such as al-Qaida, Hezbollah, FARC—the Revolutionary Armed Forces of Colombia—and domestic terrorists.

Under the direction of the Attorney General, the Justice Department is placing increased emphasis on targeting gangs. Fisher was chosen by the Attorney General to head that effort. Under her guidance, the Criminal Division has created the National Gang Targeting, Enforcement and Coordination Center, a multiagency initiative led by the Criminal Division, with participation from the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Bureau of Prisons, the Drug Enforcement Administration, the Federal Bureau of Investigation, U.S. Immigration and Customs Enforcement, and the U.S. Marshals Service. Those are agencies she coordinates.

The gang initiative will create law enforcement strategies and facilitate operations across agency lines aimed at dismantling national and transnational violent gangs. Fisher also established a new gang squad of experienced gang prosecutors who coordinate nationwide prosecutions and make them more effective.

Under her leadership, in partnership with various U.S. Attorney's Offices and the Drug Enforcement Administration, more than 130 defendants were recently indicted and hundreds of thousands of dollars seized as part of an international operation targeting the trafficking of black tar heroin in the United States. The multistate investigation, called Operation Black Gold Rush, included arrests in 15 U.S. cities and 10 indictments in eight Federal judicial districts, along with State charges. More than 17 kilograms of black tar heroin, a potent form of heroin that is dark and sticky in appearance, were seized during this operation.

As Assistant Attorney General, she also has been involved now, and earlier when she was the Deputy Assistant Attorney General, with the Enron task force. We remember when everybody talked about Enron that something had to be done about it. Many people doubted anything would be done about it. President Bush announced that we were going to have integrity in big business, and big business people who cheat and harm their employees and others in this country will be vigorously prosecuted. She was involved in that effort.

She supervised the Enron task force. It has investigated that entire scheme created by the executives of Enron to

deceive the investing public, the Securities and Exchange Commission, and others. The case has resulted in convictions of top Enron executives. Many said that wouldn't happen, but they have been indicted, convicted, assets seized, and those include Ken Lay and Jeffrey Skilling, the two top people.

As a member of the corporate fraud task force—and we need to be aggressive in prosecuting corporate fraud in America—Fisher coordinates with other agencies on corporate fraud policies and investigations.

She has supervised recent corporate fraud prosecutions involving defendants from AIG, BP, and Qwest. She is not afraid to take on the big boys. She has done so effectively and courageously.

She is cochair of the Law Enforcement Subcommittee of the President's Identity Theft Task Force. That is an important issue in our country. I have a staff person, and someone stole her identity and used it. She spent years trying to clear her record and get the situation straightened out.

Under her direction, this subcommittee is focusing on enhancing coordination among law enforcement agencies, the Federal Trade Commission, and others to maximize the Government's capabilities to curb the international problem of identity fraud.

Mr. President, I know you served so ably in Florida as a mayor and then later as a member of the President's Cabinet. Florida and other areas received terrific losses during Hurricane Katrina. We will probably spend over \$100 billion on trying to help that whole region recover and a whole city, New Orleans, that was flooded. Having been a prosecutor in Mobile on the gulf coast after hurricanes, I can tell you that fraud does occur. You want to get money out to people who are hurting in a hurry. You can't ask for the same amount of time and evidence that you would normally ask. People need help right now. They have no place else to go. But people take advantage of that. The scum of the Earth take advantage of the generosity of the American people by often slipping in as contractors or claimed beneficiaries, lying about losses, to get money that is supposed to go to people who are hurting.

Well, just days after Hurricane Katrina hit the Nation, Attorney General Gonzales established the Katrina Fraud Task Force. This task force would send a message right off the bat that fraud would be investigated and prosecuted, and it was to focus on fraud and corruption resulting from the hurricanes. He named Fisher the Katrina Fraud Task Force chairman. As chairman, Alice Fisher quickly set up a forward-looking strategic plan and resource allocation for this interagency task force, among all the other things she was doing, to investigate and prosecute fraud arising from Hurricane Katrina and related disasters. Under her guidance, the task force has made great strides to combat fraud.

As of July 25, the task force had charged 371 defendants in 29 separate Federal districts. A majority of the cases charged to date have involved emergency benefits fraud against both FEMA and the American Red Cross—charitable donation fraud. People have gone out and claimed they are raising money to help people, and they just steal it. What kind of sorry person is that, who would ask people to sacrifice and give help to someone else, and then steal the money? We have that, and she is working against it.

Other cases have involved Government contract fraud. We have people taking advantage of the contracting process and cheating when they are supposed to follow through and do certain amounts of work for the Government. They have certified they have done it, they get paid, and then we find out they didn't do it. Some of them need to go to jail.

The task force has therefore been taking a number of proactive measures to identify, investigate and prosecute these kinds of cases.

Alice Fisher created the Katrina Fraud Task Force Joint Command Center in Baton Rouge where analysts, agents, and inspectors from the Inspector General and Federal law enforcement communities co-locate—these are all of the agencies, State and local—they get together to focus on procurement fraud and public corruption which could result from the over \$100 billion reconstruction money flowing into the affected region. As of July 25, 2006, the Command Center has received and referred 6,424 complaints to various Federal agencies.

The task force has provided training for the Inspector General community. Each one of these agencies have their own Inspector General, and many of those Inspector Generals are not familiar with hurricane work. They train all of them so that the Commerce Department, the Agriculture Department, the Coast Guard, and other agencies involved with this relief effort can have watchdogs within their agencies trained to prevent fraud.

I am going to tell my colleagues, we have had a problem in this Nation, and we still do, of public corruption. There are public officials, whether in hurricane areas or not, who are taking money, extorting bribes and that sort of thing. Unfortunately, that is true. For the most part, we are a Nation of high integrity, but there are those who don't meet those standards and need to be prosecuted. I would say, in many cases, the Federal investigators are the ones who really have the best opportunity, the independence, the distance, from the situation to handle these cases, and they just have to do it. They have been rightfully praised over the years for their leadership in that area.

Under Fisher's leadership, the Public Integrity Section has prosecuted major public corruption cases, including the ongoing Jack Abramoff investigation, which has to date resulted in five pleas

of guilty and in a conviction after trial of David Safavian, the former chief of staff of the General Services Administration—the GSA, a big Government agency here in Washington, their chief of staff. In addition, Fisher supervised the successful prosecution of former Alabama Governor Don Siegelman and former HealthSouth CEO Richard Scrushy for conspiracy and public corruption offenses.

Fisher was recently named by the Deputy Attorney General to establish a national procurement fraud initiative. Now, we have a lot of money that is paid out as a result of Government procurement by our military and other agencies, and there is a good bit of fraud there, so she is forming a national initiative on that.

Since Fisher's tenure began, the Department of Justice has made headway in aggressively prosecuting crimes against children. A lot of people say the Department of Justice shouldn't be involved in those kinds of things; that it is not important, and we need to focus on other big issues. But I submit the Department of Justice's leadership and work in these cases can make quite a difference.

For example, the Criminal Division is currently coordinating 18 national child pornography operations targeting hundreds and, in some cases, thousands of customers or participants in mass child pornography distribution schemes. In addition, as of July 26, 2006, the Innocence Lost Initiative targeting children victimized through prostitution has resulted in 228 open investigations, 543 arrests, 86 complaints, 121 informations or indictments, and 94 convictions in both the Federal and State systems.

Fisher is working on the implementation of the Adam Walsh Act. We all know John Walsh, what a tragic story he has lived through and, as a result of it, has become a national leader, well-known throughout this country for his work in the protection of children. So she is working now to create the mechanism to fully implement the Adam Walsh Act, which was passed by Congress just recently to combat child exploitation, and the Department's new initiative targeted at protecting children from predators, Project Safe Childhood, another time-consuming and challenging activity.

Fisher serves as a key member of the Department of Justice Intellectual Property Task Force and oversees the Computer Crimes and Intellectual Property Section of the Criminal Division. Under Fisher's leadership, the Department has increased its prosecution of these cases and enhanced international partnerships in this area. It is important that we do operate internationally.

As Assistant Attorney General in charge of the Justice Department's Criminal Division, Fisher developed and implemented a strategic plan to focus and prioritize the mission of the Division's approximately 750 employ-

ees. This management plan has organized the Division around the following priorities and goals: Supporting the national security mission. Supporting the national security mission—that wasn't the No. 1 goal of the Department of Justice Criminal Division when I was a prosecutor. This is as a result of the leadership of the President and the Attorney General and Alice Fisher.

So the top goals are supporting the national security mission, protecting this country from attack, ensuring Government integrity, prosecuting fraud and corruption, ensuring market integrity. That is—in the free market, the banks, financial communities, businesses, securities, making sure that there is integrity in that. They have a record of achievement. Combating violent crime is still a part of the duties, particularly gangs and drug trafficking and protecting against crimes on the Internet and crimes against children.

So this is a very fine, hard-working public servant who gives her every waking hour to trying to promote justice and protecting this country from attack. What she can say and what she can't say in response to probing and fishing expeditions from Members of Congress about meetings and conversations and top-secret security activities that she may be involved in is not her decision; it is really the Executive Branch deciding how much of these actions should be made public. So it is not her fault.

I submit to my colleagues that she wasn't involved in any of these issues that people are so hot about. She didn't set the policies. She didn't write the memos. She was lower down in the chain of command at that time. That wasn't her responsibility. She is being drawn into this now so that we can continue to have complaints about the efforts of this President and his team to aggressively find, identify, prosecute, and convict those who would threaten the people of this United States.

So I am impressed with Alice Fisher. She was a young, aggressive woman when I met her. She didn't have a whole lot of experience. I questioned her about that. But I could sense that she had the drive to be successful, to serve our country, and she has utilized every opportunity she could to further the interests of law enforcement and justice in America. I think she is a good nominee. In a different time, she would go through just like that; it would not be a problem. But here we are with an election coming up, and the theme here is that this administration is abusing prisoners and being mean to unlawful combatants and terrorists, and they are trying to maintain that theme and drag her into it. They shouldn't do that.

She needs to be confirmed. She needs to have the full authority of the office of chief of the Criminal Division of the Department of Justice. She will be

more effective if she has been confirmed and holds the office permanently. She will do a great job, I believe. Her record has proven that. I urge my colleagues to support this nominee.

Mr. President, I thank the chair and yield the floor, and I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I have sought recognition to speak in support of the nomination of Alice Stevens Fisher to be Assistant Attorney General of the Criminal Division of the United States Department of Justice.

Ms. Fisher has an outstanding academic record. She received a bachelor's degree from Vanderbilt in 1989. At Vanderbilt, she was a member of the Gamma Beta Phi Honorary Society. She received her law degree from the Catholic University of America's Columbus School of Law in 1992. She served as Note & Comment Editor of the Catholic University Law Review, which was a mark of distinction. After law school, she was an associate with Sullivan & Cromwell from 1992–1996.

She served as Deputy Special Counsel to the United States Senate Special Committee to Investigate the White-water Development Corporation from 1995 to 1996.

She was an associate of the law firm of Latham & Watkins from 1996 to 2000, and was made a partner in 2001.

From 2001 until 2003, she served as the Deputy Assistant Attorney General in the Criminal Division of the Department of Justice.

She went back to Latham & Watkins from 2003 to 2005. On August 31, 2005, she was appointed as the Assistant Attorney General for the Criminal Division via recess appointment, which is her current position.

She is a member of a number of bar associations, and she has extensive writings on a number of subjects.

I ask unanimous consent that a full statement of her qualifications be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ALICE STEVENS FISHER, NOMINEE—ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

Alice Stevens Fisher was nominated by President Bush to be Assistant Attorney General, Criminal Division, Department of Justice on April 5, 2005. The President appointed Ms. Fisher to that position via a recess appointment on August 31, 2005.

Ms. Fisher has had a distinguished legal career and brings over ten years of experience to the Department of Justice.

After graduating from the Catholic University of America's Columbus School of Law in 1992, Ms. Fisher became a member of the law firm of Sullivan & Cromwell.

In 1995, Ms. Fisher served as Deputy Special Counsel to the U.S. Senate Committee Investigating Whitewater Development Corporation and Related Matters, where she supported the Senate's investigation and assisted in drafting the final report.

In 1996, Ms. Fisher returned to private practice and joined the law firm of Latham & Watkins. At Latham, Ms. Fisher's practice focused on the representation of corporations in government investigations and complex civil litigation. In 2001 she became a partner.

From 2001 until 2003, Ms. Fisher served as Deputy Assistant Attorney General in the Criminal Division of the Department of Justice.

As Deputy Assistant Attorney General, she supervised the Divisions Counter-Terrorism Section, Fraud Section, Appellate Section, Capital Case Unit, and Alien Smuggling Task Force.

In 2003, Ms. Fisher returned to Latham & Watkins as a partner.

On April 5, 2005, President Bush nominated Ms. Fisher to be Assistant Attorney General, Criminal Division, Department of Justice. She was appointed to that position via a recess appointment on August 31, 2005.

SUPPORT FOR ALICE FISHER

"It is with the greatest enthusiasm that I write this letter in support of Alice Fisher. . . From personal experience, I know that she will serve the President and the country with great dedication, integrity, and talent. Her judgment and skills as both a lawyer and a leader are unparalleled." Michael Chertoff, Secretary to the Department of Homeland Security.

"During my tenure as Solicitor General, I had the privilege and pleasure of working with Ms. Fisher. . . I found Ms. Fisher to be an extremely accomplished, able and dedicated public servant. In my view, she is a superb choice to head the Criminal Division and I enthusiastically urge that the Committee and the full Senate vote to confirm her appointment." Theodore B. Olson, former United States Solicitor General.

"Ms. Fisher's experience as a litigator and policy-maker, as well as her strong, positive relationship with the law enforcement community, makes her an excellent choice to lead the Criminal Division. The F.O.P. has no doubt that she will continue to be an outstanding Assistant Attorney General, and we urge the Judiciary Committee to expeditiously approve her nomination." Chuck Canterbury, National President, Fraternal Order of Police.

"From the commencement of my appointment, my staff and I worked closely with Ms. Fisher, who at that time served as Deputy Assistant Attorney General in the Criminal Division in the Department of Justice. In all of my numerous dealings with Ms. Fisher, I found her to be a person of tremendous legal acumen and good judgment, extremely hard working, and a person committed to upholding the highest standards of the Department of Justice and the legal profession." Mike A. Battle, United States Attorney for the Western District of New York.

ALICE STEVENS FISHER—ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Birth: January 27, 1967, Louisville, KY
Legal Residence: Virginia
Education: B.A., Vanderbilt University, 1989, Gamma Beta Phi Honorary Society
J.D., Columbus School Of Law, Catholic University of America, 1992, Note & Comment Editor, Catholic University Law Review

Employment: Associate, Sullivan & Cromwell, 1992–1996

Deputy Special Counsel, U.S. Senate Special Committee to Investigate Whitewater Development Corporation & Related Matters, 1995–1996

Associate, Latham & Watkins, 1996–2000
Partner, Latham & Watkins, 2001

Deputy Assistant Attorney General, Criminal Division, Department of Justice, 2001–2003

Partner, Latham & Watkins, 2003–2005

Assistant Attorney General, Criminal Division, Department of Justice (recess appointment August 31, 2005), 2005–present.

Selected Activities: Member, Virginia Bar Association, 1992–1996

Member, American Bar Association, 1992–1996, 1998–Present

Barrister, Edward Bennett Williams Inn of Court, 2002–Present

Member, The Kentuckian Society

Member, The Federalist Society, National Practitioner's Advisory Council, 2004.

Mr. SPECTER. Ms. Fisher's nomination has been delayed for a very long period of time. In the meantime, Ms. Fisher has been serving as Assistant Attorney General for more than a year. She has handled some very high profile investigations and has done an outstanding job.

When she appeared before the Judiciary Committee, she presented herself very well. She is extremely well-qualified for the position.

Since her nomination, some objections have been raised and her nomination has been delayed because an email memorandum, authored by an FBI agent, lists her as an attendee at a meeting where Department of Defense Guantanamo interrogation techniques were discussed. Ms. Fisher was not responsible for the interrogations conducted at Guantanamo by the Department of Defense or the FBI. She did not approve or direct the interrogation or interrogation techniques, and she was not involved in the approval of the Office of Legal Counsel's memorandum, the so-called Bybee memorandum.

Senator LEVIN, before withdrawing a hold on Ms. Fisher's nomination, wanted to talk to the FBI agent who was identified in the file in connection with Ms. Fisher's nomination. However, when the matter became protracted and delayed, the Attorney General asked me if I would meet with Senator LEVIN and the FBI agent. It was the practice of the Department of Justice not to make an FBI agent available to Senators but only to the chairman of the Judiciary Committee. I decided to honor that request even though I did not see the connection between Ms. Fisher and either the FBI or the Department of Defense's interrogation techniques.

Senator LEVIN wished to have the FBI agent appear, not with the customary representative from the Department of Justice, Office of Legislative Affairs, but instead with someone from the Department of Justice Inspector General's Office. We accommodated Senator LEVIN by having a representative from the FBI's General Counsel's office attend the meeting. We also accommodated Senator LEVIN on the location of the meeting, which was held

in his office and I was happy to meet there.

The interview with the FBI agent lasted approximately 1 hour, during which we had an extensive discussion about what the FBI agent knew about interrogation techniques. The meeting barely, barely, barely touched on Ms. Fisher. Nothing in the interview showed any misconduct or impropriety on the part of Ms. Fisher. Nothing contradicted her testimony. She was barely involved.

Following that meeting, Senator LEVIN made a request to see two other individuals who had no connection with Ms. Fisher and no connection with her nomination.

I am glad we have come to this point. I have included extensive documentation in the record demonstrating the way the Department of Justice responded in honoring Senator LEVIN's requests. I have worked with Senator LEVIN for 26 years. He is a very thorough and effective Senator. When he wanted to see this FBI agent, we worked it out so that he saw the FBI agent.

I am glad the hold is off. I understand we are going to vote on Ms. Fisher. I believe this comes under Shakespeare's edict: All's well that ends well. And now we will go on to work on some other important matters, such as trying to get habeas corpus in effect on the Guantanamo issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, I thank my good friend from Pennsylvania for his words.

After I tried for about a year to get the Attorney General to make available an FBI agent so we could talk to him about a memo that he wrote naming Ms. Fisher, naming three other members of the Criminal Division that she was the Deputy Director of, as being very aware of the debate between the FBI and the Department of Defense over interrogation practices at Guantanamo, I was unsuccessful for about a year to simply get information.

Stonewalling has occurred in this case. The delay that has occurred in this case is directly attributable to the refusal of the Department of Justice to provide information to this Senator.

After that meeting—and I thank the good Senator from Pennsylvania for arranging it; it wouldn't have happened without him—after that meeting, something became clear which needed to be clarified. I sent a letter to the Department of Justice on that matter. It is a very important matter involving whether Mr. Nahmias, the counsel to the Criminal Division who was aware of the tactics which were being used at Guantanamo, was personally involved in knowing about this debate between the FBI—it did not like what it saw—which objected to the tactics being used and was very vehement about it and did not want his agents to participate in the interrogations and wrote e-

mails to the Department of Justice saying: You cannot believe what is going on down here. There was this vehement dispute between FBI and the Department of Defense on interrogation tactics. This is the background for what is in the headlines today.

At the discussion which occurred in my office, which Senator SPECTER accurately described, the FBI agent indicated that Ms. Fisher's connection related to one discussion he could remember about a specific event, not abusive interrogation techniques but, rather, about whether one of the detainees down there had been involved in September 11. That is what his recollection was. We accept that. We have no basis to not accept it.

However, something came out at that July meeting which is critically important. He said he had regular discussions on this subject about the detainee treatment at Guantanamo with the counsel to the Criminal Division, David Nahmias, and another Deputy Director, Bruce Swartz. We simply wanted to find out from the two of them, particularly from Mr. Nahmias since he served in the same department of the Justice Department with Alice Fisher, and the Deputy Director of that department, whether he, David Nahmias, had shared the information that he got from the FBI that wrote the e-mail, with the Deputy Director of that department.

For reasons that I cannot fathom, the Justice Department is still stonewalling answering questions which are directly related to the nomination. That question is, Did Mr. Nahmias and Mr. Swartz share with the Deputy Director of their own department, the Criminal Justice Department, what they had learned from this FBI agent about the raging dispute going on between the FBI and the Department of Defense over these tactics?

We asked the Attorney General if we could talk with Mr. Nahmias. By the way, this is the fourth request I had made to meet with Mr. Nahmias. I started in May of 2005 because he was named, along with Ms. Fisher, and Mr. Swartz as having been present at meetings during which these tactics were discussed. So he was right in that e-mail. We asked four times to see Mr. Nahmias. We have been rejected every time.

But now, in my office, we learned something else which is significant, which is relevant, which is going to go unanswered. It is going to go unanswered because the Department of Justice will not even answer the questions which I want them to put to Mr. Nahmias.

What I finally have done out of exasperation was to write to the Attorney General saying: You obviously are not going to produce two relevant people so I can ask them very basic information—did they share the information they had about these abuses and these raging debates between FBI and DOD. You are not going to allow me to ask

those two people whether they shared that with the Deputy Director of their department. You are simply not going to do it. Would you at least ask the two of them questions in writing about whether they shared that information with Ms. Fisher?

The answer of the Department of Justice is silence—stone, cold, silence—to my request.

That is where we are. I will be voting against this nomination because of the stonewalling by the Department of Justice of legitimate, reasonable requests for information which are still outstanding, relative to Nahmias and to Swartz.

That is unacceptable. It puts us in a position of voting on nominees without relevant information which we should have. The delay—and I emphasize this—the delay in this matter is not mine. The delay is the refusal of the Department of Justice to provide information, to provide witnesses for a year and a half.

Without the help of my good friend from Pennsylvania, Senator SPECTER, we never could have even received the information that we got from the FBI agent, and, as he knows, I am grateful to him for that. I can now only hope that he will join in asking the Department of Justice—it can come after this nominee's vote—I would hope he would consider joining the request of the Department of Justice that we have this information for the record as being relevant to the matters we are debating.

I close by saying I believe it is unacceptable, it is wrong for the Department of Justice to deny the Senate relevant information. We are going to end up voting now on this nomination of Ms. Fisher without it. It should not be that way. I will express my opposition to the stonewalling tactics of the Department of Justice by voting no on this nomination, again, with my thanks to the chairman of the Judiciary Committee for the help that he did provide in this matter.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, there are many things I can say in response to what the distinguished Senator from Michigan has said, but silence is the preferable course.

Instead, I ask, as the representative of the majority leader, to set the vote at 5:45 with the expectation there will be no other speakers. I ask unanimous consent we set the vote at 5:45.

Mr. LEVIN. I understand we have a thumbs up from the rear of the Chamber. I have no objection.

Mr. SPECTER. People who run the Senate, staffers, have just consented to the request.

Mr. LEVIN. They didn't consent, but they indicated to me there was no objection, to be technically correct.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUNNING. Mr. President, I speak today on the nomination of Ms. Alice Fisher to be Assistant Attorney General for the Criminal Division at the

Department of Justice. Ms. Fisher, a native from Louisville, KY, is without question very well qualified to fill this position. As a fellow Kentuckian, it is an honor to address her nomination today, and I give her my full support.

I firmly believe that Ms. Fisher possesses the qualifications needed for this position. Her dedication and personal drive stand as an example to us all.

Ms. Fisher has served as Assistant Attorney General for over a year now. In this time she has coordinated with law enforcement agencies on a variety of issues, including antiterrorism prosecutions, public corruption cases, and child pornography cases.

Prior to this appointment, Ms. Fisher served within the Department of Justice managing both the Counterterrorism and Fraud Sections of the Department. In this time, she was responsible for coordinating the Department's national counterterrorism activities, including matters related to terrorist financing and the USA PATRIOT Act.

Throughout her tenure at the Department of Justice, Ms. Fisher has shown time and time again that she is a true leader and leads by example. Many of her colleagues testified before Congress this past year about her unwavering work habits and her true commitment to justice.

This is the type of leader that we need in our Government. I urge my colleagues across the aisle who have held up her nomination in the past to not let partisan politics get in the way this time. We need to move forward with her nomination. Not only does she have a proven record, but it was approved overwhelmingly by the Judiciary Committee, and now she deserves a fair up-or-down vote on the Senate floor.

I am confident that when she receives this vote that she will be confirmed, and I wish her continued success in her position.

Mr. SPECTER. Mr. President, I will yield back my time.

Mr. LEVIN. I yield back my time, also. I am willing to do that as Senator SPECTER has yielded his back. What time remains?

The PRESIDING OFFICER. The Senator from Vermont has 13 minutes. The minority leader has 59 minutes. The majority leader has 27 minutes.

Mr. LEVIN. I wonder if the Senator from Pennsylvania would agree that we can put in a quorum call and the time be deducted proportionally from all of the remaining speakers.

Mr. SPECTER. That is acceptable. Having set the vote at 5:45, we have given our colleagues ample notice. If somebody wants to speak in the next 14 minutes, they certainly would be at liberty to do that. My hunch is that we will have a quorum call for 14 minutes. The important thing is that we have finished the discussion on a reasonably harmonious note.

I suggest the absence of a quorum. The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GREGG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GREGG. Mr. President, I ask unanimous consent that we proceed to the vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GREGG. Mr. President, I ask for the yeas and nays on the nomination.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Alice S. Fisher, of Virginia, to be an Assistant Attorney General? On this question, the yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Minnesota (Mr. COLEMAN).

Further, if present and voting, the Senator from Minnesota (Mr. COLEMAN) would have voted "yea."

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. AKAKA), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Louisiana (Ms. LANDRIEU) are necessarily absent.

I further announce that if present and voting, the Senator from Massachusetts (Mr. KENNEDY) would vote "nay."

The PRESIDING OFFICER (Mr. CHAMBLISS). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 61, nays 35, as follows:

[Rollcall Vote No. 251 Ex.]

YEAS—61

| | | |
|-----------|-----------|-------------|
| Alexander | Domenici | Murkowski |
| Allard | Dorgan | Nelson (NE) |
| Allen | Ensign | Pryor |
| Bayh | Enzi | Roberts |
| Bennett | Feingold | Salazar |
| Bond | Frist | Santorum |
| Brownback | Graham | Sessions |
| Bunning | Grassley | Shelby |
| Burns | Gregg | Smith |
| Burr | Hagel | Snowe |
| Chafee | Hatch | Specter |
| Chambliss | Hutchison | Stevens |
| Coburn | Inhofe | Sununu |
| Cochran | Isakson | Talent |
| Collins | Kyl | Thomas |
| Cornyn | Lincoln | Thune |
| Craig | Lott | Vitter |
| Crapo | Lugar | Voinovich |
| DeMint | Martinez | Warner |
| DeWine | McCain | |
| Dole | McConnell | |

NAYS—35

| | | |
|----------|------------|-------------|
| Baucus | Feinstein | Mikulski |
| Biden | Harkin | Murray |
| Bingaman | Inouye | Nelson (FL) |
| Boxer | Jeffords | Obama |
| Byrd | Johnson | Reed |
| Cantwell | Kerry | Reid |
| Carper | Kohl | Rockefeller |
| Clinton | Lautenberg | Sarbanes |
| Conrad | Leahy | Schumer |
| Dayton | Levin | Stabenow |
| Dodd | Lieberman | Wyden |
| Durbin | Menendez | |

NOT VOTING—4

| | |
|---------|----------|
| Akaka | Kennedy |
| Coleman | Landrieu |

The nomination was confirmed.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each.

I now request the opportunity to address the Senate under that provision.

The PRESIDING OFFICER. If the Senator will withhold just a minute, please.

Mr. WARNER. Yes, Mr. President, without losing my right to the floor.

The PRESIDING OFFICER. The President is notified of the Senate's action with respect to this nomination.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate now returns to legislative session.

The Senator's request is agreed to. The Senator from Virginia is recognized.

PRAYER IN THE ARMED FORCES

Mr. WARNER. Mr. President, at the present time, the members of the Armed Services Committee of the Senate and the members of the Armed Services Committee of the House are in a conference. A great deal of confidentiality is attached to that procedure. I do not in any way intend to violate that confidentiality.

But before the conference—and this is not a matter of confidentiality—is a provision in the bill of the House of Representatives which is related to military chaplains. I will read from the House bill.

Each Chaplain shall have the prerogative to pray according to the dictates of the Chaplain's own conscience, except as must be limited by military necessity, with any such limitation being imposed in the least restrictive manner feasible.

That is the end of the proposed bill language. That is what I would like to address at this time.

I first want to say that the Senate has no such provision, and therefore we have to resolve the difference between the two bodies. The House of Representatives put this provision in during markup, which is the time they go over their bill. Another amendment was offered in that markup and rejected. It is referred to as follows: "Amendment to H.R. 5122, offered by Mr. Israel," Member of Congress, and it provides in section 590, which I just read, relating to military chaplains: at the end of the quoted matter inserted by each of the subsections (a), (b), (c), (d), and (e), insert the following: "except that chaplains shall demonstrate sensitivity, respect, and tolerance for all faiths present on each occasion at which prayers are offered".

I personally have not decided on what version I personally feel should